

104  
**THE ADMINISTRATION AND CONGRESSIONAL  
INITIATIVES TO REFORM OSHA, AND THEIR  
IMPACT ON SMALL BUSINESSES**

---

Y 4. SM 1:104-42

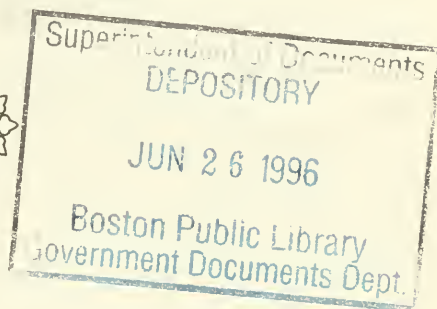
The Administration and Congressiona...

**HEARING**  
BEFORE THE  
**COMMITTEE ON SMALL BUSINESS**  
**HOUSE OF REPRESENTATIVES**  
**ONE HUNDRED FOURTH CONGRESS**  
**FIRST SESSION**

WASHINGTON, DC, JULY 26, 1995

Printed for the use of the Committee on Small Business

**Serial No. 104-42**



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1996

92-764 CC

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402  
ISBN 0-16-052640-X



104  
**THE ADMINISTRATION AND CONGRESSIONAL  
INITIATIVES TO REFORM OSHA, AND THEIR  
IMPACT ON SMALL BUSINESSES**

---

Y 4. SM 1:104-42

The Administration and Congressiona...

**HEARING**  
BEFORE THE  
**COMMITTEE ON SMALL BUSINESS**  
**HOUSE OF REPRESENTATIVES**  
**ONE HUNDRED FOURTH CONGRESS**  
**FIRST SESSION**

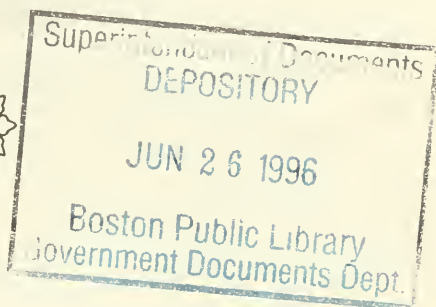
---

WASHINGTON, DC, JULY 26, 1995

---

Printed for the use of the Committee on Small Business

**Serial No. 104-42**



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1996

92-764 CC

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-052640-X

## COMMITTEE ON SMALL BUSINESS

JAN MEYERS, *Kansas, Chair*

JOEL HEFLEY, Colorado  
WILLIAM H. ZELIFF, JR., New Hampshire  
JAMES M. TALENT, Missouri  
DONALD A. MANZULLO, Illinois  
PETER G. TORKILDSEN, Massachusetts  
ROSCOE G. BARTLETT, Maryland  
LINDA SMITH, Washington  
FRANK A. LOBIONDO, New Jersey  
ZACH WAMP, Tennessee  
SUE W. KELLY, New York  
DICK CHRYSLER, Michigan  
JAMES B. LONGLEY, JR., Maine  
WALTER B. JONES, JR., North Carolina  
MATT SALMON, Arizona  
VAN HILLEARY, Tennessee  
MARK E. SOUDER, Indiana  
SAM BROWNBACK, Kansas  
STEVEN J. CHABOT, Ohio  
SUE MYRICK, North Carolina  
DAVID FUNDERBURK, North Carolina  
JACK METCALF, Washington  
STEVEN C. LATOURETTE, Ohio

JOHN J. LAFALCE, New York  
IKE SKELTON, Missouri  
RON WYDEN, Oregon  
NORMAN SISISKY, Virginia  
KWEISI MFUME, Maryland  
FLOYD H. FLAKE, New York  
GLENN POSHARD, Illinois  
EVA M. CLAYTON, North Carolina  
MARTIN T. MEEHAN, Massachusetts  
NYDIA M. VELAZQUEZ, New York  
CLEO FIELDS, Louisiana  
WALTER R. TUCKER III, California  
EARL F. HILLIARD, Alabama  
DOUGLAS "PETE" PETERSON, Florida  
BENNIE G. THOMPSON, Mississippi  
CHAKA FATTAH, Pennsylvania  
KEN BENTSEN, Texas  
WILLIAM P. LUTHER, Minnesota  
PATRICK J. KENNEDY, Rhode Island  
JOHN ELIAS BALDACCI, Maine

JENIFER LOON, *Staff Director*

JEANNE M. ROSLANOWICK, *Minority Staff Director*

ROBERT E. COAKLEY, PROFESSIONAL STAFF

PATRICIA HENNESSEY, PROFESSIONAL STAFF



# CONTENTS

---

Hearing held on July 26, 1995 .....	Page 1
-------------------------------------	-----------

## WITNESSES

WEDNESDAY, JULY 26, 1995

Norwood, Charlie, a Representative in Congress from the State of Georgia .....	3
 Panel	
Coratolo, Giovanni, Port of Italy Restaurant, Springfield, Virginia .....	14
Dear, Joseph A., Assistant Secretary of Labor and Occupational Health .....	11
McGeady, Eamonn, President, Martin Imbach, Inc., Baltimore, Maryland .....	17
Palmer, Richard, Vice President and Secretary Treasurer, Palmer Painting Co., Inc., Amarillo, Texas .....	22
Roth, William, Finite Industries of New Jersey .....	24
Stone, William, president, Louisville Plate Glass Co., Louisville, Kentucky .....	19

## APPENDIX

Opening statements:	
Meyers, Hon. Jan .....	48
Poshard, Hon. Glenn .....	51
Prepared statements:	
Coratolo, Giovanni .....	52
Dear, Joseph A. ....	60
McGeady, Eamonn .....	75
Norwood, Charlie .....	77
Palmer, Richard .....	83
Roth, William I .....	91
Stone, William .....	94
Additional material:	
Characteristics of Blood Containing Aerosols Generated by Common Powdered Dental Instruments .....	105
Letter to Chair Meyers from Assistant Secretary Joseph A. Dear clarifying issues raised during hearing. ....	112
Remarks by President Clinton on the National Performance Review, May 16, 1995 .....	132
The New OSHA, Reinventing Worker Safety and Health .....	136
Statement by The National Roofing Contractors Association (NRCA) concerning overhaul of OSHA and Implications for Small Business .....	170
Comments on Federal Regulations with Adverse affects on member agencies by the American Network of Community Options and Resources (AVCOR) .....	177
Statement by Frank Bomlter, president of Automotive Oil Change Association .....	248



# THE ADMINISTRATION AND CONGRESSIONAL INITIATIVES TO REFORM OSHA, AND THEIR IMPACT ON SMALL BUSINESSES

---

WEDNESDAY, JULY 26, 1995

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, DC.*

The committee met, pursuant to notice, at 2:03 p.m., in room 2359, Rayburn House Office Building, the Honorable Jan Meyers (chairwoman of the committee) presiding.

Chair MEYERS. Good afternoon. Today, the Small Business Committee will hold a hearing on the Administration's and Congressional initiatives to reform OSHA, and their impact on Small Businesses. This is the second of what I anticipate will be a continuing series of oversight hearings, which will focus upon what is actually happened to reduce paperwork and regulatory burdens upon small business.

As I mentioned during last week's hearing, congressional oversight may not attract the press interest that some other legislative activities do, but I believe oversight should be a hallmark activity of the Small Business Committee activity.

This fall, we will hold hearings on EPA and IRS initiatives. My intent is that these hearings will provide the basis for the committee to develop a report card a year from now on whether initiatives to reduce regulatory burdens on the small business are actually working.

At the White House Conference on Small Business this past June, President Clinton spoke eloquently on his Administration's initiatives to reduce the regulatory burdens on small business. He referred to his March 1, 1995 memorandum, to Department and Agency heads, to make regulatory reform a priority.

Agency heads were to read all their regulations page by page, and indicate to him by June 1 which regulations they would eliminate, which they would modify, and which needed legislative attention in this reinvention exercise.

He demanded performance from the department heads, and promised results to the Small Business Delegates. Last week, Sally Katzen, the Administrator of OIRA, the President's regulatory traffic cop, presented a status report on the Administration's progress to implement the President's directive.

She also joined in a panel with small business representatives to discuss how to evaluate the results. I thought we had a useful dialogue between this committee, and the Administration, and the

small business community. I believe there was much common ground and common sense in this approach.

Today, Secretary Dear will present a progress report on OSHA's reinvention initiatives, and participate in a panel with small business. The Reinventing OSHA Initiative, in response to the President's directive, was announced May 5 and showcased at the White House Conference.

I appreciate the Administration's and Secretary Dear's willingness to contribute to this kind of forum. I have asked him and our small business witnesses to address what questions would be appropriate to ask now, and 6 months from now, to determine whether regulatory burdens on small businesses are actually reducing.

Congressman Charlie Norwood will open our hearing. He brings his experience as a dentist to his work on the Workforce Protections Subcommittee of the Committee on Economic and Educational Opportunities, where he has been actively involved in the legislative effort sponsored by Congressman Cass Ballenger to reform OSHA. Our witnesses today will be commenting on that legislative proposal as well.

Let me turn now to our Ranking Minority Member, Mr. LaFalce, for any opening statement that he would wish to make.

Mr. LAFALCE. I thank you very much, Madam Chair. First of all, I would offer my opening statement in the record.

Chairwoman MEYERS. Without objection. So ordered.

Mr. LAFALCE. I would like to make some personal remarks. First of all, I want to congratulate you for continuing these oversight hearings. I have long believed that is the most important work that our committee could do, when we had oversight hearings on the implementation and Administration of OSHA last year, and Assistant Secretary Joe Dear and many others came and testified, and so I welcome him back, and we should do this all the time.

There is a difference this year though. I detect a gleam in the eyes of some individuals who are talking about reform, and that gleam tells me that they're not so much interested in reform. They would really like to emasculate OSHA, if not eliminate OSHA.

They won't say that explicitly, but if you read between the lines, that's pretty clear. Now, there is a difference between making OSHA operate in a better manner something that I think we all want to do and really trying to emasculate its effectiveness.

Second, we very often pit employer against employees; saying the employee should be for OSHA, and the employers should be against it, and that is such a false dichotomy. It's in the interests of every single employee, and every single employer to have a good OSHA. A good OSHA is going to mean more knowledge, a better and safer work place, and that's going to make for a much better, safer, and more profitable business.

My next point is sometimes we have to make judgment calls, and we make judgment calls which sometimes are very, very difficult. Sometimes we err, but if we have to err, then I believe we ought to err on the side of safety, and I'll tell you why I say that.

I was the first in my family to even go to high school, much less college, law school, et cetera. My parents were very working class, and my father was exposed to chemicals in the work place, and at

a relatively young age he had industrial hepatitis, and it affected his liver for the rest of his life.

My mom worked in a factory, and had her fingers taken off. Now, you can't really replace a liver too easily. They didn't have transplants in those days, and you can't replace fingers; and if we had a better, more effective OSHA, that wouldn't have happened in all probability.

If we want to have a better OSHA, OK. But if anybody has in mind emasculating OSHA, its Administration, implementation, or the law, they are going to have a mighty fight on their hands, not only from the head, but from the heart. Thank you, Madam Chair.

Chairwoman MEYERS. Thank you, Mr. LaFalce. Without objection, all other opening statements will be put in the record. I don't want to turn the opening statements into an argument, Mr. LaFalce.

Mr. LAFALCE. You have agreed with me so far, I would suspect.

Chairwoman MEYERS. I appreciate the personal experience that you have brought to this hearing. I've talked to a lot of small business groups, and they don't want to eliminate OSHA. They want to have a friendlier OSHA, an OSHA that we can work with.

But that will undoubtedly come out in the hearing today. At this time, I would like to turn our attention to the Honorable Charlie Norwood, and we look forward to hearing from you, Mr. Norwood.

#### TESTIMONY OF HON. CHARLIE NORWOOD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. NORWOOD. Thank you, Chairwoman Meyers, and distinguished members of this committee. I would first like to say what a distinct honor it is for me to appear before you this afternoon, and I do applaud you for the work that you are doing in investigating the actions of OSHA, and the impact that OSHA has on small businesses.

I think that it is very appropriate that you here in the Small Business Committee are taking a long, hard look at OSHA. Of the many things that OSHA does badly, and there are many, I guess one that has bothered me more than anything else is that OSHA hurts small businesses who cannot adequately defend themselves.

Big businesses consider fighting OSHA a normal part of doing business every day. If you a General Motors, or a Goodyear, or a U.S. Steel, you can afford to hire a flock of lawyers to keep up with all the dictates that OSHA sends down from on high.

But small businesses don't have the resources to fight when OSHA comes knocking on their door. Over the past several weeks, we in the Workforce Protection Subcommittee of the Opportunities Committee, have been working very hard on legislation to reform OSHA. Chairman Ballenger's bill will go a long way toward correcting many of the excesses of OSHA.

Many of these reforms will have a very specific impact on small businesses. OSHA will be required to issue a warning for an alleged violation, and allow an employer a reasonable time to fix a violation before fining an employer.

The Ballenger bill will protect small businesses by requiring employees to work with employers to fix a perceived problem before OSHA is called in.



It is my understanding that the assistant secretary of OSHA will be appearing before you later on today. We have had several hearings at which we have heard testimony from Mr. Dear, among others. Mr. Dear has stated time and time again that some 56,000 American lives are lost each year due to work-related accidents and illnesses.

Now, I don't agree with Mr. Dear's numbers. In fact, the professionals at the Department of Labor don't agree with his numbers either, but that's another story. We'll get into that another day. The important thing to understand, I believe, is that even if Mr. Dear and the Democrats are correct, then all that they really are demonstrating is that what we have done up to now has not helped us achieve safer and healthier work places.

Work place deaths and injuries are a tragic event. For the past 25 years, I have earned my living as a dentist and a nurseryman. As an employer, I was very interested in providing the safest work place possible for myself and for my co-workers. I think we should remember that in small businesses often the employer is also the employee. The employer is the person doing the work.

However, I do understand that I cannot legislate a perfect, accident free world. We cannot legislate absolute safety. We all would if we could.

Indeed, past Congresses have tried, but it has not worked as Mr. Dear and so many of our democratic colleagues will tell us. There are many anecdotal stories of tragic deaths and injuries at the work place that provide the evidence of our failure to legislate and bureaucratically mandate work place safety.

So, as responsible, compassionate legislators, we have a duty, I think, to find better ways, more efficient ways to further work place safety and health, and that is why I and other members of the Workforce Protection Subcommittee have worked so hard to develop good, sound, reasonable legislation to reform OSHA.

Interestingly enough, even the Clinton Administration has come around to agree that OSHA must be changed. In taking steps to create a new OSHA, the Administration has announced that it will be guided by three basic principles; more cooperation between OSHA and employers; the application of some good old fashioned common sense, and having results, not red tape. That certainly is a good start in the right direction.

I would suggest that this committee look very closely at OSHA to ensure that its actions matches its rhetoric. To sum up, Madam Chairwoman, it is time for a new approach to work place health and safety. We need to depart from the present "command-and-control" regulatory scheme.

If we must have an OSHA, then we must change it from a police agency looking to hit small businesses with punitive fines, into a center for work place safety, designed to assist companies in achieving safer work places.

In conclusion, I'd like to say to you that all of this to me, and including this hearing, is not really about occupational health and safety. I do not know one person in this Congress who is not for that. I do not know one person that I have ever worked with who was not interested in safety and health in the work place.

I have spent the last 30 years of my life being interested in health. What this is all about is how do we achieve that goal; and what we have not done correctly in the past.

The fact that we continue to talk about 56,000 tragic deaths and accidents every year indicates that we have not achieved what we started out to do. I thank you very much for allowing me to spend this time with you, Madam Chairwoman.

[Mr. Norwood's statement may be found in the appendix.]

Chairwoman MEYERS. We're very glad to have you here, Mr. Norwood. I would like to ask if any member of the committee had any questions they would like to ask. Yes, sir. Mr. Bartlett, first, and then Mr. Manzullo.

Mr. BARTLETT. Thank you very much. The 56,000 were accidental deaths, or were they accidents and deaths?

Mr. NORWOOD. The 56,000 actually, 50,000 of those, I think Mr. Dear says that these are premature deaths caused by occupational diseases. The other 6,000 plus have to do with workplace deaths that occur because of a lack of safety, so to speak.

Mr. BARTLETT. What were these numbers before OSHA?

Mr. NORWOOD. I think the number of 50,000 has been—and I don't mind being corrected, Mr. Dear, but I think the number of 50,000 has been added just recently. Again that is Mr. Dear's estimate of premature deaths that have occurred in the work place because of occupational diseases, that is not the official estimate of the Bureau of Labor Statistics.

I don't know what the number was, Mr. Bartlett, before last year. I do know that that is a very difficult thing to estimate that is why the BLS has not given an official count. We know premature deaths in much greater numbers than that occur outside of the work place, and it is very difficult to estimate at least according to the Department of Labor.

It is very difficult to attribute those numbers to a work place problem. The death may have occurred while at work, but the cause of the death, frequently it is difficult to determine that it was from the work place.

Mr. BARTLETT. How much have OSHA regulations increased the cost of dental care?

Mr. NORWOOD. Well, there are different numbers that are being cited. The American Dental Association has numbers, but I can tell you from personal experience. We tried for a good while to absorb the new costs that were coming through our office, and found that finally we just simply could not do that.

For us to manage as a small business, and a very competitive business, we had to eventually levy an additional charge for each patient that sat in our chair of \$10 per visit, and it was called in our office an OSHA charge.

We did that in order that our expenses could be covered, but we did it that particular way so that we could point out to patients that these expenses that you're paying are one's that are directly related to some of the changes that we had to make in our office, and particularly in our office in the lack of production, the amount of time taken away to follow the rules and regulations of OSHA.

I would simply tell patients that and they often did complain about that charge, but I would simply give them Congressman Bernard's telephone number.

Mr. BARTLETT. But were your offices demonstratively a safer place because of these regulations?

Mr. NORWOOD. I don't want to tell you that I believe because of OSHA that there have not been some very good things that occurred, but generally speaking, we did not feel that the OSHA regulations made our office any safer than it already was. The posting requirements, and paper requirements that we had to go through certainly did nothing to help us create a safer workplace.

I've been in practice for 30 years, and the worst accident that I could remember, and believe me, I've been thinking back about this very subject, was one of our lab technicians cut his finger. I am absolutely certain there have been no deaths in our office.

I know that I came out in an era when infection control was very well understood. We knew what to do about it, and we have been dealing with hepatitis in our office since the first day I ever started. So, we didn't feel like that many of the things that we were having to do made any sense at all.

Chairwoman MEYERS. Mr. Bartlett, I wonder Mr. Manzullo, I'll go to my left now, because I had a request for a question for Mr. Dear.

Mr. MANZULLO. John is to my left.

Chairwoman MEYERS. Mr. LaFalce.

Mr. LAFALCE. I wasn't going to ask any questions, but you intrigued me when you talked about putting down an OSHA charge on your bills of \$10 per patient. I have been going to a dentist for my entire life. How many in this room have ever gone to a dentist where they have seen a charge on their bills that have been called an OSHA charge? Would you please raise your hands?

Mr. LAFALCE. I thought so. Nobody raised their hand to indicate that.

Mr. NORWOOD. There are two approaches, you know.

Mr. LAFALCE. But I would think that very few dentists in the United States add something to their bills and call it an OSHA charge. So, it was interesting that you, when you were in the private sector, did that, because that helps to explain why you feel so strongly about OSHA. It was something that you felt strongly about when you were a private practitioner, correct?

Mr. NORWOOD. Yes.

Mr. LAFALCE. Because most dentists that I know of don't put that down.

Mr. NORWOOD. No, they hide it in their fees.

Mr. LAFALCE. Because we hide all costs in our fees. When we say hide, they include it in their fees, but most are not resentful that they would pinpoint. Now, what caused this particular resentment on your part for OSHA that you put it in your fee?

What did OSHA want you to do in your dental office that you weren't doing, or something, that added a cost that you told your patients, that amounted to about \$10 per patient? What did they want you to do?

Mr. NORWOOD. You have to understand that you're right. I did that because I'm passionate about freedom.



Mr. LAFALCE. Well, yeah, I understand passion about freedom, and so am I. But it's still true that your striving for freedom targeted OSHA. What was it that OSHA demanded of you to do in your dental shop which aroused your passion?

Mr. NORWOOD. Well, how long you got? All right. Let's start with just this. We were a very happy crew; myself, and my partner, and 12 employees. Our people came to work dressed, and ready to work. They would come in their scrubs, and they would come in their lab coats. We would work for 9 hours each day, and they would go home in their scrubs and in their lab coats.

Now, OSHA comes in and says, no, you can't do that any more, and it upset the employees a lot more than their employer; that they had to come to the office in civilian clothes, and change clothes at the office, because OSHA insisted that I wash all of their uniforms, or send it out to a cleaner.

What we ended up having to do in our office was simply buy a washer and dryer, and we were fortunate enough that we had enough space in our office that we could put one in, and turn one of the rooms into a dressing room, all of which cost money, all of which was a total waste of time, but that's what happened to us.

I don't think you ought to have to wear rubber gloves, for example, on every procedure.

Mr. LAFALCE. Wait just a second. Do you think that nurses at hospitals, and doctors who operate in hospitals, for example, that they should be able to wear clothes at a baseball game, or at home, or at dinner, et cetera, and then come into the hospital? Don't the hospitals require that the nurses put their uniforms on at the hospitals?

Mr. NORWOOD. You make a good point, and I appreciate you bringing it up. It is one of the good things about the Ballenger bill, and it says that the standards need to be industry specific.

Mr. LAFALCE. How do you distinguish between a hospital and a doctor's office?

Mr. NORWOOD. There is also a distinction between an emergency room and a dentist office.

Mr. LAFALCE. But don't you operate in your office? Doesn't a dentist do his dental operations in his office; whereas a physician very often would do his operations in a hospital?

Mr. NORWOOD. Yes, but all of this comes from the blood borne pathogen standard, that by the way, is estimated to cost each dental office \$23,700 per year to answer an earlier question. There are different dental offices that do different things, and all this is about blood.

Some dental offices, yes. Some of this gets to be a totally different story if you're a periodontist, or if you're an oral surgeon. But if you're a reconstructive dentist such as myself, we don't deal with very much blood.

That simply was not a problem in our live.

Mr. LAFALCE. Well, you pull teeth. You pull a tooth.

Mr. NORWOOD. What makes you think I do?

Mr. LAFALCE. Well, I don't know.

Mr. NORWOOD. I know that. I understand that you don't know that.

Mr. LAFALCE. I don't know that. Most dentists pull teeth.

Mr. NORWOOD. No, most dentists don't necessarily pull teeth.

Mr. LAFALCE. All right. I stand corrected.

Mr. NORWOOD. Some dentists pull teeth, and oral surgeons do it all the time.

Mr. LAFALCE. Well, most every dentist I've ever known, and included within the definition of dentistry, is the occasional pulling of teeth.

That frequently brings about a certain amount of blood.

Mr. NORWOOD. In a very friendly way, if you would just accept the fact that I probably know a lot more dentists than you do.

Mr. LAFALCE. Of course you do, but on this specific issue of whether or not most dentists do in fact pull teeth, I have to say that with my limited knowledge that I would suspect that the position that I articulated might be more correct than the position that you have just articulated.

Mr. NORWOOD. If you assume every dentist pulls a tooth.

Mr. LAFALCE. I didn't say that, did I? I said most dentists.

Mr. NORWOOD. Well, let's just take for an instance that every one of them extracted teeth, that doesn't necessarily mean that the blood borne pathogen standard was correct for a dental office. We got along very well without it.

Mr. LAFALCE. I'm going to plead total ignorance on that blood pathogen standard, OK? I know zero about it. I think it would be interesting to hear the experts on OSHA's opinion about it.

Mr. NORWOOD. Well, let me.

Mr. LAFALCE. Wait a minute. Did you have an IRS surcharge fee for the cost of the IRS.

Mr. NORWOOD. No, just OSHA.

Mr. LAFALCE. Just OSHA? Just OSHA has aroused your passion?

Mr. NORWOOD. Well, OSHA has got my attention pretty well, because it was on top of Federal Regulations from the IRS, on top of regulations from the Labor Department, on top of regulations.

Mr. LAFALCE. I thought it was below all of those myself.

Mr. NORWOOD. Well, it was sort of new. It was in addition to is where we were coming from.

Chairwoman MEYERS. I would agree with Mr. Norwood, that most of the people who I have talked to said that it is the accumulating effect that really is the most burdensome. I'm going to call on Mr. Manzullo, and then Mr. Baldacci, and then after those two, with the agreement of the committee, I would like to go on to the panel.

If you have burning question, please indicate; otherwise, we'll go on to the next panel.

Mr. MANZULLO. Thank you. Charlie, I was talking to some dentists back in Illinois, and they related to me the following story. There was a father and son team, a partnership, and they had to go through and label every chemical in their office, including liquid paper, which is that white correction fluid you put on letters when you make a mistake. Then it had to go to into a manual.

But they said that the most incredible regulation they had was based on their partnership. Because they worked for themselves, and not for an employer, they don't have to use rubber gloves in their procedures.

Mr. NORWOOD. That's correct.

Mr. MANZULLO. But if they were a corporation, in which case they would be employees working for the corporation, then they would have to wear rubber gloves. I said that doesn't make sense.

He said, well, that's why I sent you to Congress, to try to do something about it. It would appear to me that the sanitary effects, if any, of wearing the rubber gloves has absolutely nothing to do with the legal form of business in which these dentists are engaged.

Additionally, they reached a point where they had either 10 or 15 more employees in the office, there is a point beyond which more OSHA regulations get kicked in. Do you know what they did, Charlie? They froze the number of their employees at one below, because they said for us to go above that level is going to bring in more and more of these OSHA regulations.

I agree with you, and with the rest of the panel, that if it's an issue of safety, none of us have a problem with it. But do you agree with me that this is the OSHA interpretation of the employer versus the sole proprietor as to the gloves? Does that make sense?

Mr. NORWOOD. No, it doesn't make sense, and you're totally right, and my personal opinion is that those in this country most trained, most skilled, most capable of determining when you should wear gloves, and when you're not, are those of us with a doctorate degree in dentistry.

I'll be happy to challenge anybody that they've got over in OSHA, that Mr. Dear's got writing standards about my profession, and discuss it with them.

Mr. MANZULLO. Well, what I find interesting is the fact that when the OSHA inspector comes, he first has to determine whether or not it is a sole proprietorship, a partnership, or a corporation, before he takes a look to see whether or not the dentists are wearing gloves.

Chairwoman MEYERS. Thank you, Mr. Manzullo. We have a vote. In fact, I think it is a series of votes, and so we will have a question from Mr. Baldacci, and then we will go vote, and get back as soon as we can for our panel.

Mr. BALDACCI. Thank you very much, Madam Chairperson, for calling this hearing, and for Charlie for introducing legislation. The point that I think I wanted to make is that the Administration has received the message for formally ruling on the enforcement process, and that in fact doesn't even disagree with the message that is being developed.

Indeed, the President's statement on the subject have been initiatives, and not reactions to make regulations more common sense, and results oriented. In Maine, Maine has got one example of this, is the Nationalization of the Maine 200 Program, which provides relief from inspections and fines to employers who work with their employees to create a safe work place.

By working in partnership with 200 of the most unsafe employers in Maine, OSHA was able to identify nearly 100,000 work place hazards, more than half of which have been eliminated. As a result of those efforts, nearly 60 percent of the employers have reduced their injury and illnesses, and Workers Comp claims, and insurance premiums have been reduced.



But it's a collaborative effort. It's working together, and it's something that our grandmothers taught us many years ago, is that you can get more with honey than you can with vinegar.

I think in getting the Agency to work together with the employers, and to try to do the things that are in their interests, and in the people's interests that's working there, I think they can see and recognize a real benefit, both not only in the work place safety, injuries and accidents, but also in their Workers Comp and insurance premiums, and ancillary insurance costs that they do have.

But it has to be done more cooperatively, and not at command and control; and we have to develop that, and I would like to think that the Maine Program, which is going to be sort of a national program, would be a step in that direction.

I applaud the Administration's efforts, and the industry's initiatives, and also this committee for making sure that the record matches up with the rhetoric. Thank you, Madam Chair.

Mr. NORWOOD. Could I make a quick comment on that?

Chairwoman MEYERS. Yes.

Mr. NORWOOD. I totally agree, and I want to say while Mr. Dear is in the room, that they are beginning to take steps in the right direction. One of my concerns is, well, for how long will they take steps in the right direction.

The idea is that if the Federal Government is to have an OSHA Program, it should be one where they serve as a resource. They serve to do research, and they work hand-in-hand with employers. Employers already have great motivation to have a safe and healthy work place.

The problem is that Mr. Dear comes to a hearing like this 3 years ago, and he sits in his chair, and Senator Kennedy sits up there, and pounds the table because he hadn't laid on enough fines this year, because he hadn't had enough inspectors out in the field this year.

So, I'm sort of defending Mr. Dear and his program. He has been pushed into a situation where the number one priority was to go collect money; and all we're trying to say is, look, if you're going to have this program, work with us. We don't want unhealthy work places.

Mr. BALDACCI. Madam Chair, my only point would be that whatever has happened has happened, and if we move forward together in a thoughtful manner, that we can accomplish an awful lot more. So, I wasn't here, and I don't know if you were here.

Mr. NORWOOD. No.

Mr. BALDACCI. But I'm not sure. Your descriptions are pretty apt, but let's just move forward together, I guess, and very positively.

Mr. NORWOOD. I hope so. We've got a deal that will do that.

Mr. BALDACCI. Thank you, Madam Chair.

Chairwoman MEYERS. We will have four votes; the first will be a 15 minute vote on the Mulholland Amendment, and then 5 minute votes on the Scott Amendments and Norton Amendments, and the Field Amendments. They are all amendments to Title I.

So we should be back about 3 or 3:15 p.m., and we will do the very best we can, and I hope all of us will be able to come back.

[Whereupon, at approximately 2:36 p.m., the committee recessed, and was again called to order at 3:23 p.m.]

Chairwoman MEYERS. Well, thank you all for being in place, and I think with the permission of the panel, what I would like to do is start and just go through the panel.

We will light the lights, but don't feel like you have to break off in the middle of a sentence. But when the red light goes on, if you would stop as soon as you comfortably can after that. We would like to have you take about 5 minutes apiece.

The reason that I'm going right through, and then coming back for questions for all of you is because I would like to have as much of our committee hear all of your testimony as I can, because some of you have come a long way.

We will start with Mr. Joseph Dear, whose name has been taken in vain a couple of times today. He has very graciously allowed or consented to be with us today. He is the Assistant Secretary of Labor for Occupational Safety and Health, and we're glad to have you here with us today.

Mr. BALDACCI. Madam Chairman?

Chairwoman MEYERS. Yes.

Mr. BALDACCI. May I ask before Mr. Dear starts for a unanimous consent to submit an opening statement for the record, in case we have to leave before the panel gets through?

Chairwoman MEYERS. Thank you very much. Without objection, it is so ordered.

Any others who have an opening statement they would like to submit. Mr. Dear.

#### **TESTIMONY OF JOSEPH A. DEAR, ASSISTANT SECRETARY OF LABOR AND OCCUPATIONAL HEALTH**

Mr. DEAR. Thank you, Madam Chair, and members of the committee. I will summarize my remarks, and if I could ask to have the full remarks placed in the record. It is a pleasure to appear before this committee to discuss OSHA's initiatives to reinvent itself to improve the protection of worker's at risk received, and at the same time to reduce the regulatory burdens on small business.

In addition, I would like to talk briefly about how OSHA is responding to President Clinton's request of March 4, and April 21, memoranda on reinventing regulation. I know from talking to many of you and watching earlier today, that you have heard a number of stories about OSHA during this session, and many of them very troubling.

For instance, you've heard allegations that we have banned the tooth fairy, and won't permit dentists to give extracted teeth to their patients to them. That story is false, as most of the stories you hear. But these stories continue to surface.

Chairwoman MEYERS. Mr. Dear, could I ask of you to get very close to the mike, and speak right into it, because we can hear you fine, but sometimes it doesn't go to the back doors.

Mr. DEAR. Stories like the tooth fairy concern me, because they detract from the more important story of how OSHA is working with employers, and workers, to promote and improve work place safety and health in the country.

The plain truth is that OSHA saves lives. Since it was created in 1970 the rate of fatal occupational injuries in this country has been cut in half. OSHA's protective standards really make the dif-

ference between life and death for millions of working Americans, whether it's the lead protection standard, asbestos, vinyl fluorides, grain handling or trenching, these standards make the difference for workers every day.

But our work is far from done. As Congressman Norwood noted, OSHA estimates that 56,000 Americans die each year as a result of injury or illness contracted as a result of their work. That's about 150 a day, and if there was a plane crash in this country with 150 people being killed every day, there would be a national outcry and a demand to do something.

But since these events occur in isolated occurrences around the country, that outcry isn't heard. Further, there are 16,000 disabling injuries every day. 6,000 workers are hurt so badly that they are unable to continue work for some periods of time.

The human and economic toll of these injuries is enormous on the human side, and beyond our reckoning; and on the economic side, just the accidents alone cost the economy over a \$100 billion. We don't have a good estimate for the cost of work related disease.

Now, as we examine the impact of OSHA regulations on small businesses, it's important that we not forget that a safe and healthful work environment is just as important for employees working in small firms as it is to those working in large firms. Work place injuries, illnesses, and deaths are not confined to certain industrial sectors or just to large firms.

According to an OSHA analysis of a Bureau of Labor Statistics data, businesses with fewer than 11 employees account for 33 percent of all fatalities, even though they account for just less than 20 percent of all employees.

So, while small businesses may at times seek exemptions from regulations, their employees unfortunately have no exemption from work place tragedies.

Now, since I have been working at OSHA since 1993, I have been trying hard to get OSHA focused on how we can reduce work related injuries, deaths, and illness, and get the most out of our limited resources.

I know that OSHA has to change the way we do business. Our mission is to save lives and prevent injuries, and protect health of workers is just as valid today as it was when OSHA was created 25 years ago, but because our mission hasn't changed does not mean that we don't have to change how we work.

On March 4, the President issued regulatory directions to all regulatory agencies, telling us to cut obsolete regulations, and to reward results, and not red tape; and to meet with those affected by our regulations, and to expand efforts to utilize consensual negotiated rule making.

As you noted, Madam Chair, on May 16, the President, Vice President, and Secretary Reich announced a host of OSHA initiatives called the New OSHA, reinventing worker health and safety. Those reinvention initiatives comprised three basic elements.

The first is offering employers a choice between traditional enforcement, or a partnership. The second is bringing common sense to the regulations; how they are developed, and how they are enforced; and the third is to get OSHA focused on results, and not red tape.



Last week, Sally Katzen, the Administrator of OIRA, described one initiative, the Maine 200 Program, and as Congressman Baldacci illustrated, we contacted many firms who had problems. We offered them a partnership approach. 198 out of 200 accepted, and 60 percent of them have already reduced the injuries and illnesses that they have experienced.

Those employers found 14 times more hazards than we could have found if we had employed our traditional strategy for trying to physically inspect work places. The President has told us to expand that Maine 200 concept around the United States, and we are doing that.

In terms of performance measurement. We're changing how we measure how we do our work. In the past OSHA was driven by measures of activity: How many inspections did we do, and how many violations for inspections did we find; how many penalty dollars did we collect.

If you looked at our budget, and if you look through this testimony, those are the things that we measured. A perception was created in the work community that our inspectors were operating on a quota system, and that our budget was actually financed out of the penalty dollars we collected.

That's not the case, and we never had a quota, but we did measure things in terms of numbers, and not in terms of results. On October 1, 1994, we put a stop to that. Our goals for this year is to talk about reductions in illnesses, injuries, and deaths; and about the effectiveness of our interventions in the work place.

We are also changing how we evaluate the people who work in OSHA, so that we get a change in the day to day operations and that it will really make a difference where it counts, at the work place, where employers and workers see OSHA on the job.

Now, the last part I want to cover is our review of regulations. The President told all the regulatory agencies to do a page by page review, and for OSHA that meant about 3,000 pages of Federal Regulations. We identified a number of opportunities for improvement. The first of these is the Hazard Communications Standard, the right to know standard.

We will be asking the National Advisory Committee on Occupational Safety and Health to review that standard, and find ways of making it less burdensome, but ensuring that information necessary to give workers a right to know about the toxic chemicals they work with is assured.

I'm very optimistic that we will be able to reduce the burden and approve the program as a result of this work with HAZCOM. In terms of our small business efforts, we tried to address the concerns of small businesses and standards that have been adopted since I came to OSHA. In 1993, we adopted a lead and construction standard, and we made some specific provisions for whole new monitoring types of projects by working with the National Association of Homebuilders to develop some special guidance.

An OSHA rule for grain elevators with small storage capacity was also adjusted so that they could use physical measurement instead of requiring automatic equipment, like OSHA's factories.

Just recently, within the past month, we announced a change in our interpretation of the trenching standard to deal with the prob-

lems that homebuilders had in constructing foundation walls, and they had to waterproof those walls.

Now, we have been working to assist employers of small businesses to understand our rules better, and how to better comply with them. One of the most important efforts which we have undertaken is a consultation program which we financed for 44 States directly and through the State plans in the other 6 States.

This free, no-fault consultation program has helped over 100,000 small businesses in the past 5 years, and helped them to correct over 800,000 hazards, free of charge, and free of citation, and free of penalties. We are also working to develop compliance tools using information technology; expert systems designed to help employers come into compliance with the new Cadmium standard, a standard which was developed in cooperation with the Cadmium Council, and they, and OSHA have distributed it.

We've done something similar with the new asbestos standard. In looking toward the 21st Century, we want to explore ways to use information technology to provide assistance to employers, and to expand information on issue compliance available through the Department of Labor bulletin board, and to increase the offerings that exist already on our Internet home page, and to look for other opportunities to use technology to make it easier for employers to comply.

Madam Chair, this issue of worker safety help is one that I believe provides us more opportunity than any issue that we deal with to find a common ground between our agency and employers, and workers, and the Government.

Safe and healthy work places are good for people. That's obvious and understood, and they're good for business. They are profitable and competitive work places. We have an opportunity of defining that common ground. OSHA is looking for partners, not for adversaries.

I appreciate the opportunity to be with your committee today. Thank you.

[Mr. Dear's statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much, Mr. Dear. Our next witness is Mr. Giovanni Coratolo, Port of Italy Restaurant, Springfield, Virginia; and I believe you are a member of the National Restaurant Association, and will be speaking for them.

#### TESTIMONY OF GIOVANNI CORATOLO, PORT OF ITALY RESTAURANT, SPRINGFIELD, VIRGINIA

Mr. CORATOLO. Yes. Madam Chairman, and members of the committee, it is a very distinct pleasure to appear before you today. My name is Giovanni Coratolo, and I am the owner of Port of Italy Restaurant in Springfield, Virginia. We are a 300 seat Italian restaurant.

I also serve on the board of directors of the National Restaurant Association, and I'm speaking here today on behalf of the Association, which is the leading trade group for the Nation's 739,000 food service establishments. Over three-fourths of these food service operators are small businesses with gross annual sales of \$500,000 or less.



I have owned the Port of Italy Restaurant for 25 years. It is my job, and it is my pride. The restaurant business is a difficult industry in which we earn a living. I regularly spend 75 hours a week in the restaurant. When I was growing up, I was always told that small business people are the backbone of this country. They were what made America great.

Madam Chair, unfortunately, Government regulation is breaking our backs. When the Federal, State and local governments, with their thousands of employees, generate hundreds of thousands of pages of regulations, I am the one who has to bear the brunt of their requirements.

When Mr. Dear talks about rewriting 3,000 pages of OSHA requirements, where do I find the time to review these, and implement them in my business. As a small business owner, my time and resources are scarce.

By the way, Madam Chair, this is a list of all of the regulations that my industry has to submit to from the Federal Government. This is for Virginia, State and local; and I have one for you for the State of Kansas, if you would like to peruse it, for restaurants.

As a small business owner, my time and resources are scarce. My responsibilities are endless. At my restaurant, I am the engineering department, and I am the marketing department. I am the personnel department, and I am the legal department.

I work with my cooks, and I train my service personnel. If you came to dinner at the restaurant, there is a good chance I would seat you. With the responsibility of implementing the wealth of Federal, State, and local regulations, it is amazing I am able to produce a quality dinner for my patrons.

I believe the food service industry is second only to the nuclear power industry in terms of the number of regulations and regulatory agencies. Regulation is something that we are all aware of. In our industry, one regulation never replaces another, but instead is added to an already existing list.

Well-intentioned bureaucrats only provide a multitude of complex requirements which are confusing and contradictory for well-intentioned business people to decipher. The stack of regulations never gets smaller; it only grows.

I realize this hearing is about OSHA, and so let me discuss this particular agency. My biggest asset in my business is healthy employees. My biggest cost is work related injury. OSHA could be a big ally. Personally, we have never had one Workman's Compensation claim, and that's with over \$1.5 million of payroll over the years.

Restaurants have to contend with a number of OSHA rules; the Hazard Communication Standard, the Blood Borne Pathogen Standard, the Lockout/Tagout Standard, the Personal Protective Equipment Standard, and the general duty clause. Each of those regulations is a complex document, with subjective interpretations, but clearly defined penalties for their breach.

These regulations require various actions for compliance. Just a few examples. Those employees who chop vegetables should wear slash resistant gloves. Cleaning agents such as common hand soap must contain a written warning. If someone should get a bloody

nose, the bloody waste should be handled properly and disposed of separately.

Again, I will stress that the intentions behind these individual regulations are not bad. However, put yourself in the shoes of the restaurant owner who was cited for a violation of the Hazard Communication Standard because he did not have a written plan on the premises.

His principal violation was the transfer of window cleaner from its original gallon jug to a spray bottle which was not labeled as to the content and warning. This is despite the fact that employees were familiar with the contents of the bottle, and the cautions for its use.

It's not so much that the regulatory horror stories happen all the time, but every small business owner knows that it could have happened to them. To those of us subjected to the daily pressures of running a small business, these types of minor violations resulting in major fines seems to obscure the intent of the original regulation.

As we speak here today, OSHA is contemplating another layer of complex regulation for me to understand and implement in my work place. These regulations would require businesses to ban smoking, as well as provide a written indoor air contaminants plan. I was going to turn this regulation over to my engineering department, but unfortunately I was out for the day.

Obviously, restaurants are different from other businesses in regards to smoking because it is our customers who smoke. The National Restaurant Association estimates a smoking ban would cost food service operators \$18.2 billion in lost sales. The heaviest impact will be felt in the bar and tavern segment, largely because patrons who smoke will not stay as long.

There are times when patrons utilize our smoking sections during lunch specifically because they can't smoke at their work place. Some OSHA officials argue that this proposal does not ban smoking because smoking is allowed in a separately ventilated room.

I do not know of any small business owner who can afford to construct a room with a separate ventilation system, particularly when the OSHA proposal will not allow the people to be served, or tables to be bussed as long as anyone in the room is smoking. Therefore, OSHA's proposal is in reality a ban on smoking.

While tobacco smoke gets most of our attention, the proposal is just as burdensome with regard to the other indoor air requirements. In an effort to control such ambiguous ailments as sick building syndrome, and building related illness, OSHA would require all work sites to have a written indoor air compliance plan, a designated employee trained in the operation of the ventilation system, and a monitoring of the relative humidity and carbon dioxide levels.

Very few restaurant owners will be able to comply unless they contract out with an industrial hygienist who will provide, for a fee, a written plan, training, and monitoring. This proposed rule focuses entirely on written plans, and administrative requirements without setting any identifiable goals for compliance.

The OSHA indoor air proposal is the type of regulation which leads small business people like me to say enough is enough. In my

opinion, it shows the pendulum has swung too far, and we need major reform in OSHA's mission.

This brings me to my last point. When I think of OSHA, I think of the age-old joke told by small business people. "Hi, I'm here from the Government, and I'm here to help you." Inspections are too often used by disgruntled employees as revenge against their employers.

As a well-intentioned business owner, I am suddenly confronted with a regulatory agency that presumes me guilty until I can be proven innocent. There are too many sticks in the current system, and not enough carrots.

The members of this committee have heard from the voters, and thankfully you are having hearings like this one today. I encourage you to follow through on transforming OSHA. I understand Representative Cass Ballenger has introduced a bill which will restore some balance to OSHA by stressing more consultation and less confrontation.

While I am not an expert on all the specifics of the bill, it seems like it moves OSHA in the right direction. I encourage you to follow through because I do not believe OSHA's current state of mind will change without impetus from Congress.

Please make the phrase, "Hi. I'm from the Government, and I'm here to help you," a reality and not a joke for us small business people. Thank you, Madam Chairman.

[Mr. Coratolo's statement may be found in the appendix.]

Chairwoman MEYERS. Thank you, Mr. Coratolo. Your restaurant sounds great, and I think you're just about 20 miles from here aren't you?

Mr. CORATOLO. Very close. Very close.

Chairwoman MEYERS. Well, I think maybe we ought to have a hearing there.

Mr. CORATOLO. Well, you're all invited.

Chairwoman MEYERS. Our next witness is Mr. Eamonn McGeady, and he is president of Martin G. Imbach, Incorporated, of Baltimore, Maryland. He will be speaking for himself, and for NFIB, I believe, also.

#### **TESTIMONY OF EAMONN MCGEADY, PRESIDENT, MARTIN IMBACH, INC., BALTIMORE, MARYLAND**

Mr. MCGEADY. Thank you, Madam Chairwoman. My name is Eamonn McGeady, and I am president and part owner of Martin G. Imbach, Incorporated, a marine and heavy construction firm located just up the beltway here. I don't want to repeat too much of what has gone before, except to ask the chair to please include written remarks that have been presented to the Secretary, and the committee, in the record.

Chairwoman MEYERS. Without objection, it is so ordered.

Mr. MCGEADY. I was very interested to listen to Mr. Dear, to Secretary Dear; and I absolutely agree with him that OSHA needs to be more consultative versus confrontational.

Regrettably, he will excuse us if we in the small business community are somewhat wary of that approach, since we have been hammered for the last 25 years by inspectors, and representatives



of OSHA, with what appear to be many vagaries of enforcement that result in uneven matters from region to region.

An Several years ago, our firm was advised that a type of crane that we use, a floating crane, had what was known as a live boom, and that that's not tolerated by OSHA.

We sold this crane for scrap, and we bought a new crane that cost over a million dollars, and all that that implies, and today I can take you to the Port of Norfolk and show you that crane working, the old crane, the live boom crane, as are a number of other live boom cranes, because apparently that standard was only going to be applied to the Port of Baltimore.

In other instances for example, in the material safety data sheets, here is our company's material safety data sheet and plan; and I think it will surprise many of you to find out that we under penalty of a severe fine, have to tell our employees that things like cholrox, and ammonia, and gasoline, and steel, and aluminum, are dangerous to their health.

Now, we know that OSHA is trying to enforce what I believe is called the Retail Standard that's available by retail, and that you're not supposed to have to do quite as much about it. But that doesn't filter down to the field.

OSHA hires lawyers by the year. We have to hire them by the hour, and it's a very expensive fight when you get into a situation where there is overactive or overimaginative enforcement of what has been referred to as 3,000 pages of standards.

Mr. Baldacci referred earlier to the Maine 200. I really think that should be done by OSHA, and supported by small businesses. Our business happens to have, we have been told by the Maryland State people, one of the lowest experience modifications in the State, meaning we have a safe working place.

As I understand Maine 200 though, we would have to become worse to get the consultations. In Baltimore now, if you ask for a consultation from the OSHA Regional Office, you're going to get citations, not consultation. I hope Mr. Dear can change that.

But, again, I hope you will forgive us if we are wary of not getting the legislative back-up the force of law, having something such as the Ballenger bill, which I have looked at and I find very useful, and would support, having that codified so that we avoid these vagrancies of enforcement.

The most dangerous part of working is still driving to work. There were 6,200 in round numbers of fatal injuries in business last year. That's too many. The 50,000 illnesses, there is some question about where the illness was contracted; was it a chemical illness, or was it from smoking, or was it from whatever.

But there is no doubt about the fact that about 6,200 people were killed in work place accidents last year. I correct myself. In 1993, the latest year for which stats are available. Interestingly enough, about 40 percent of those accidents were either automotive or homicides, suicides. Most of us wouldn't tolerate that under any circumstances, and we don't need OSHA to tell us that.

If I had to wrap up, I would have to say if we can get consultation instead of confrontation, we will have gone a very long way. I think the Ballenger bill goes at the root, as will some of the others. I was a little surprised at Secretary Wright threatening a veto

of the Ballenger bill, or anything like it, if it passed, since even my inexpert reading of it indicates that it is four-square on many areas with what the President is recommending in the administrative reform.

I compliment Secretary Dear, and his staff for trying to turn the Queen Mary around in the bathtub, but I think he's got a lot of work ahead of him, and we need the force of law behind his efforts. Thank you.

[Mr. McGeady's statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much, Mr. McGeady. I believe that we will recess. We have a quorum call which is 15 minutes, 5 minutes of which has already passed, followed by a 5 minute vote on the Hastings amendment, which is to transfer funds from the Federal prison systems to the ELC. We will go to both. We should be back by 4:15, and we will be back as fast as we can. I'm sorry about these delays.

[Whereupon, at 3:50 p.m., the committee was recessed, and was again called to order at 4:15 p.m.]

Chairwoman MEYERS. Our next witness will be William A. Stone, and then we will come back to Mr. Palmer, because Mr. Stone has a flight. Mr. William Stone is president of Louisville Plate Glass Company of Louisville, Kentucky, and he's speaking for himself, of course, and the Chamber of Commerce. Mr. Stone.

#### **TESTIMONY OF WILLIAM STONE, PRESIDENT, LOUISVILLE PLATE GLASS COMPANY, LOUISVILLE, KENTUCKY**

Mr. STONE. Well, thank you very much, Madam Chairman. I would ask that our whole statement be put into the record, and I would really appreciate that.

Chairwoman MEYERS. Without objection.

Mr. STONE. It is a privilege to be here. My name is William A. Stone as you said, and I am president of the Louisville Plate Glass Company, Louisville, Kentucky; and we also are the majority stockholder in two Atlanta glass manufacturing firms, Tempered Glass, Inc., and Insulating Glass of Georgia, both of which I serve as the chief executive officer.

Louisville Plate Glass is a member of the U.S. Chamber of Commerce, which I represent, which is a federation of more than 215,000 businesses, 3,000 local and State Chambers of Commerce, 1,200 trade and professional organizations, and 72 American Chambers of Commerce abroad, all of which includes millions of Americans.

I am a former chairman of the Chamber's Labor Relations Committee, and currently I am a member of that committee, and I serve as a member of the chamber's Small Business Council. I was a member of the chamber's board of directors for 5 years.

The companies we manage manufacture architectural glass products primarily for commercial buildings, and employ about 116 people in three locations. As a result of my activities in the Louisville business community, and my experience with the chamber, I have developed a slightly different definition than is commonly thought of for small business, and I would like to suggest that it really is more meaningful, and I think my colleagues at the table might agree with me.

To this observer, the hallmark of a small business is one in which a person or persons who operate or control the organizations are personally at risk as the majority owners. The point is that the owner or owners have risked their own money on the success or failure of their enterprise.

Therefore, my definition of small business, small refers to the number of owners, not the number of employees, almost all businesses fitting my description, and indeed most businesses in this country, have small payrolls, limited administrative and management staffs.

This common factor is central to one of the themes of my comments, and the primary concern of the business community when considering OSHA reform proposals. There are critical differences between large companies with thousands of employees, many of those employees who are specialists and experts in various areas such as safety, security, finance, accounting, legal matters, human resources management, and some may even be able to cook pasta, but that's different than small, privately owned businesses.

Small businesses have limited management depth. Small businesses obviously do not have the in-house expertise as you have heard before from others to change the rapidly flexible and changing regulatory and legal requirements that were forced upon us by Government.

However, do not misunderstand. Small businesses desperately want to have safe and healthy work places. They want to comply with the law and regulations. However, because of our limited staff and resources, assimilating the kind of information necessary to be in total compliance is tough, and much of these regulations have very little to do with safety.

When considering OSHA reform legislation, we sure hope that Congress will remember that an effective Federal Occupational Safety Law and its regulations on small business is vastly different from the impact that reform will have on large businesses and major corporations.

Where another regulatory requirement may seem appropriate and reasonable for a large multisite corporation with thousands of employees, including several OSHA compliance experts, its impact on a one-owner, one-site operation may be disastrous. One size does not fit all.

Our plea for regulatory flexibility is not just about relieving the burdens of small business. It is about the economic viability of this country. Small Business Administration statistics show that the small business community are the primary job creators and innovators of today and tomorrow. Excessive regulation only serves to stifle that.

Being in business nowadays means one must have ready access to a library of constantly changing statutes and regulations, and be able to effectively use those resources. To do this, the modern American business owner should be a lawyer. However, most of us are not lawyers.

Louisville Plate Glass and our affiliates try to comply with all Federal and State laws and regulations. If we are unaware of an applicable mandate or requirement, we must, like most small busi-



ness managers, rely on common sense and a basic conception of fairness.

On occasion, we will consult a lawyer, but that better be limited, because that's pretty expensive. Sadly, most small businesses face these dilemmas, and unfortunately, even common sense and a willingness to do the right thing, or what appears to be the right thing, are not enough.

Let's give a specific, real world example. Safety has always been a major concern at Louisville Plate Glass Company and the other companies we manage; first, because it is simply right; and second, because it is sound business.

Nevertheless, we were experiencing high Workers Compensation costs and claims despite an intense effort, and we could not reduce our claims, although none were serious, and the rise in worker cost premiums, despite a high priority on plant safety, was shocking.

Our experience rating scored 70 percent above the industry average. We simply had to do something to stop this economic hemorrhage. So, we sat down with our employees to learn from them what we could do solve the problem. It was instructive.

They suggested that if we were successful in eliminating most accidents and claims, they should anticipate in sharing some of the economic benefits of such improvement. We got the message. Today, our company gives a cash reward to every employee that remains injury free for 6 months.

The result of the program is that 4 years after its inception, our experience rating is 15 percent below average in our industry. Given all the other increased costs of doing business, this was a valuable effort with tangible results.

Having this positive experience with employee involvement, and its beneficial effect, we're encouraged with the introduction of OSHA reform legislation that encourages, but does not mandate, employee involvement in the work place safety and health matters.

It is simply absurd the NLRB would interpret Federal Labor laws to restrict or prevent such involvement. I join the chamber in applauding its efforts to correct the NLRA through the TEAM Act, so that the NLRB can no longer stand in the way of employees who want greater involvement in their daily lives at work.

It was with great interest that I learned that the proposed legislation would also require an employee to alert his employer about a health or safety problem before calling in OSHA for an inspection. This provision should be included in many Federal Labor and Employment laws. I will give employers the opportunity to correct problems before the formal litigation process begins, and its unnecessary costs get involved.

Federal Labor law should bring employee and employer together, not encourage adversarial relationships. Now, here is a point that I really want to emphasize, and it's a new approach.

Even this approach of OSHA reform might not be necessary, because American business really doesn't need the economic incentive of OSHA fines to promote safety. Besides it being morally right, the burden of higher Workers Compensation insurance premiums provides all of the financial inspiration an employer needs.

Tough safety inspections, provided free of charge to the American taxpayer by safety engineers employed by Workers Compensation

Insurance carriers, substantially reduce the need for OSHA inspectors. OSHA in many cases is plant safety double-dipping.

Finally, I would like to at least mention the White House Conference on Small Business which just concluded. The point is that this body of small business owners called for the same kind of reforms that we have discussed in this testimony. Perhaps OSHA reform legislation should include a provision establishing an office within the Department of Labor devoted to the unique small business issues that appear too often overlooked by OSHA, and the other agencies and functions within the Department of Labor.

Thanks for the privilege and courtesy you've extended me, Madam Chairman. We appreciate the privilege of speaking here, and I'm honored to represent the U.S. Chamber of Commerce.

[Mr. Stone's statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much for your excellent testimony, Mr. Stone. We're very pleased to have you with us. Mr. Palmer is next. Mr. Palmer is vice president and secretary treasurer of the Palmer Painting Company of Amarillo, Texas, and I believe you are speaking not only for yourself, but for one of our small business associations or organizations, and if you could tell me which one.

Mr. PALMER. Yes, Ma'am. I'm speaking also for the Painting and Decorating Contractors of America, and the American Subcontractors Association.

Chairwoman MEYERS. All right. Mr. Palmer.

**TESTIMONY OF RICHARD PALMER, VICE PRESIDENT AND SECRETARY TREASURER, PALMER PAINTING COMPANY, INC., AMARILLO, TEXAS**

Mr. PALMER. Madam Chairwoman, and members of the committee, thank you for having me here today. My name is Rick Palmer; I am a painting contractor from Amarillo, Texas.

I have been involved with safety as a subject ever since the original passage of the OSHA Act. In fact, in 1988 I was appointed to the OSHA Advisory Committee on Construction Safety and Health, and I have been involved, and have testified before the old Education and Labor Committee on previous efforts of OSHA reforms.

I want to express my appreciation to you for calling this hearing, and understanding that issues like OSHA reform have significant impacts on the small business sector. This committee is correct in expanding its scope to explore issues like OSHA and other regulatory areas that play a large role in how small businesses operate.

Let me begin by discussing some themes for reform of OSHA which I believe are reflected in Mr. Ballenger's bill, H.R. 1834. First, OSHA standards and regulations should be based on common sense and sound scientific judgment. The reasoning behind safety regulations should never be a mystery to both employers and employees.

Like all other factors affecting businesses, OSHA's regulations should meet some basic threshold of logic and justification that indicates there will be a sufficient benefit to society, the worker, the employee, the work place; and a sufficient benefit equal to or greater than the burden imposed by those regulations.



Second, the relationship between the agency and the regulated community must be based on the pursuit of a mutual goal rather than on fear and intimidation. In many ways the work place has improved dramatically since the original act was passed in 1970, particularly in the emphasis on working safety.

Employers are now interested in doing that right thing, and we are looking for assistance in doing the right thing that is affordable, reliable, and effective. We should be striving for a three-way partnership here today involving the agency, the employer, and the employees, rather than the present adversarial relationship, with all three parties attacking each other constantly.

OSHA should be a source that employers can turn to improve their work places rather than the agency they have become to dread almost as much as they do the IRS. Finally, employers need some assurance that if they play by the rules, that they implement these programs, that they work safely, and they do what they're supposed to, that they are going to be protected, and their efforts are going to be recognized.

For an employer to meet all the requirements of a training regulation, do it's programs, and have it ready, and everything in place, and make sure each employee knows it, and then get a citation because some employee on the job site was either faultless or just decided not to do it that day, isn't fair.

We've done our part, but we weren't there to hold their hands, and babysit them all the time, and the company gets the citation. An employer who meets all his obligations should be protected from a citation solely related to an employee's actions.

People who have not met their obligations though, employers, they should be cited, and OSHA is correct to do so. None of these themes that I have mentioned that are in the Ballenger bill are specifically small business issues, but they take on a greater meaning in the context of small business.

Safety and protection of the workers is a universal issue, but the resources necessary to remain in compliance with OSHA's regulations, or to consistently do what is required, honestly do represent a greater burden in the small businesses than it does in the large businesses.

In construction, legitimate contractors are constantly competing against other operators that disregard safety and health, and allow these other contractors many times to submit dramatically lower bids. With the construction industry dominated by small firms, the burdens represented by compliance with strict OSHA regulations in many instances may be the difference in a bid being low, or a bid being non-competitive.

In conclusion, Madam Chairwoman, we in the employer community and especially the small business community, are looking for a bill like the Ballenger bill. We have been looking for it a long time. Much has been said about the business community's support for this legislation recently.

The truth is H.R. 1834 is attractive to responsible conscientious employers, because it helps them do things, do the right thing, by giving them assistance in protecting their employees.

At the same time, the bill does preserve the agency's enforcement abilities necessary to give the regulations impact in situations where employers have not fulfilled their obligations.

The Administration has said that they support some of the concepts and goals of Mr. Ballenger's bill, but would like to pursue these changes administratively rather than through legislation.

We welcome the Administration's participation in this effort, and hope that a true partnership will emerge, but we really kind of believe that the legislation is probably more necessary to codify these changes so that they will survive future changes in Administrations.

While I was on the Advisory Committee, we had three Secretary's of Labor, and two Assistant Secretaries of OSHA, and when I was through with the committee, we actually didn't have an Assistant Secretary at OSHA.

Chairwoman MEYERS. You caused a lot of trouble over there.

Mr. PALMER. I know. They knew me in the DOL hallways by sight. But we had an awful lot of change, and it does change with individuals. The mission is the same, but there is change with people. There are improvements that can and should be made to this bill.

We think that OSHA should have a public outreach, where it informs the public about safe work practices like the PSA Act, and it should be in there somewhere. But we can always work to make the bill better.

It's a good bill, and it will provide that magical three-way partnership. The new American work place can come when employers, and employees, and this agency work together to make it better. Thank you.

[Mr. Palmer's statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much, Mr. Palmer, for your testimony here today. Finally, we have with us Mr. William Roth, Finite Industries of New Jersey, and we're very pleased to have you here, and as I understand it, Mr. Roth has had a positive experience with OSHA, and would like to tell us about it. I'm sure that Mr. Dear is ready to hear from you.

#### **TESTIMONY OF WILLIAM ROTH, FINITE INDUSTRIES OF NEW JERSEY.**

Mr. ROTH. I think he needs it by this time. Madam Chairman, and the committee, my name is William Roth, and I am with Finite Industries. I'm the director of Regulatory Affairs, which makes me responsible for the health and safety, and compliance, as well as the environmental compliance of the company.

We have had problems with some of the current OSHA regulations with the paperwork, and all the other stuff, but the other side of the coin is that OSHA has been funding the New Jersey Department of Labor's Consultations Services Unit, and I have been using them I guess sometime since the early to mid-1980's when I first found out about them after an OSHA inspection. I wish I had known about them before.

Since that time, I have been having them both come almost annually. They found initially quite a few things, and the nice thing about it is that there were no fines. The agreement that we had

with the Consultation Services is we find them, you fix them, and OSHA doesn't know about them, and that's what we've done.

I never had a problem with anything going back with what they found. The State people have been very, very competent. They've helped us to improve our own safety internally. They identified a number of hazards that we had overlooked ourselves, even though we made great efforts to find our own.

They found one problem that we hadn't even suspected existed, where an employee was exposing himself to solvents because of the way he was working for very, very short times. Nobody ever noticed it. They found this by monitoring him, which is with equipment that we could not even afford to keep around.

They found the man was exposed to four times the permissible limit. This did not go back to OSHA, and we did not get a fine. We changed his work practices, and now his normal exposure is around 40 or 50 percent of the limit. In addition, the inspectors made suggestions about how we could reduce the room exposure, which had been about 20 to 30 percent of the limit, which is why we never suspected a problem.

We now have it under 20 percent of the limit. It cost us virtually nothing to do this, and they did most of the suggestions about how to accomplish this thing. In addition, because we've had these people here, when I first came to work, we averaged one to two accidents, reportable accidents, a year. Nothing really terrible, but still reportable accidents.

Since the DOL people have been coming in, and we have made an effort ourselves, we've had two accidents in the last 5½ years. In the meantime, we have also increased our work force by about 30 percent. So, a good part of this is due strictly to the consultation people.

This has saved us money. Again, the cost of a worker being out is enormous. In a company of our size, one worker stays out, and you have a problem with production for that day. Everybody has a job, and we don't have spare people to shift around.

It has also reduced our Workman's Comp costs, and they helped us with training, which keeps the employees safe. Again, it keeps them aware, and makes them know that we're aware of their safety, and that we're concerned for their safety. All of this hasn't cost us anything other than the cost of remediation, which has been minor.

We had an OSHA inspection about 2 years ago, and they found one safety violation, and they found a number of paperwork and minor housekeeping violations. If we had not had these people in here, the Consultation Services, it certainly would have been a lot worse, and cost us a lot more money, and we're very happy for it.

I am the president of an industrial council, a local industrial council in the area, and we've had every year now the local regional office of OSHA has sent a speaker to speak on the latest little hot case, or whatever they are talking about at the moment that they are enforcement people are looking at, to the council and to our members, and we also make this available to outside people.

There is an outreach program, and whether that's formal or not I really don't know that, but it should be. The Consultation Program certainly is formal. It's there, and it works, and it is keeping



our people safe, and it is saving the company money, and I don't know what else you could ask for.

Chairwoman MEYERS. Well, I thank you very much for your testimony, Mr. Roth; and it sounds to me as if you have the kind of relationship with OSHA that everybody else here wants, but it hasn't worked out that way. So, we've had some very good suggestions from all of you, and we will take them all to heart. I think I'm going to start questioning with Ms. Kelly, and then go to Mr. Poshard, and then Mr. Manzullo, and then Mr. Bartlett. So, Ms. Kelly.

Ms. KELLY. Thank you very much, Madam Chairwoman, and thank you all for testifying here today. I think it's very interesting to hear what you have to say from both sides of the perspective. I would like to ask Mr. Dear one question that I'm unclear about in your testimony on page 4, when you talk about—at the bottom of the page, where you're discussing the Maine experiment.

It says that "In 2 years the employers identified more than 95,000 hazards, and nearly 6 out of 10 employers in the program have already reduced their injury and illness rates."

What do you use to define an illness rate? I mean, how do you define an illness? Is that where or when people get sick? Is that what you're talking about?

Mr. DEAR. This is based on employers' reports on the OSHA 200 logs, which most of them are required to keep, and so this is the employer's own—

Ms. KELLY. What do you define as an illness, sir? I'm sorry to interrupt you, but how do you define an illness? Is that an illness because people transmitted a flu virus to each other while they were on the job?

Mr. DEAR. Normally, respiratory diseases are a result of a toxic chemical exposure. It's essentially not an accident, not an injury; an injury being a sudden traumatic event that has come about that causes a physical condition within. But if I might, we are hoping to propose a record keeping simplification shortly.

It's going to do away with the request that employers make the distinction between injury and illness. That particular question you asked is responsible for several pages of Questions and Answers to help employers fill it out. It's sort of we can figure that out when we read their reports.

But presently we ask employers to make the distinction, and if it is not an injury, and it is not a sudden traumatic event, then it's an illness of a product and cumulative exposure.

Ms. KELLY. May I ask. You had a report that was due in June, and as I understand it was sent to the White House. I don't have a copy of that report. I wonder if that is something that is being put in circulation. Is that something that we can have a copy of? I'm interested in that report.

Mr. DEAR. You most certainly can have a copy of the report when the White House releases it. It is a report to the President, and the President will select the time of release. I would be happy to share it with you right now if you want to take a minute about what's in it. It's not a secret. I made a brief reference to it.

The President, as you know, asked us to cut obsolete regulations. We had one that prohibits the use of plastic gas cans in construc-

tion. We also prevent them to be used in manufacturing. I mean, why? We can get rid of that. There is no other examples that are really obsolete.

A third of the OSHA Code of Federal Regulations are complete repeats, and in order to provide for the construction industry all the relevant standards that apply to general industry, and the same in the maritime industry, I've told those representatives, look, we're going to get rid of the duplicate pages.

They said that if you do that, just be sure that we can still get one simple publication of all of the requirements, and I have committed to do that. Finally, there are about 600 pages of consensus standards that were adopted in total without public hearings in 1971.

These consensus standards are the product of a lot of the stories that you may have heard about incomprehensible regulations, where the 12 or so pages of ladder definitions come from. It's from these consensus standards. We're going to rewrite them in plain English.

This will not be done in a year. We are going to identify three shortly that we will begin to work on, and we will do that in a consensual format, and invite the advisory committees and others to assist us in that. But I believe we can get a ladder definition in a paragraph or two, and you don't need to tell people how to make one in your consensus format.

That's clearly the case. So, the basic element from the President's report will be those things.

Ms. KELLY. I only have two very short questions that are real quick questions that I want to ask. One is on page 3 of the PCA statement, it gives an example of the Agency recently proposing splitting up volumes of regulations affecting the construction industry so that employers would have to consult two volumes instead of one.

That just saves some pages of printing, but not a single, substantive regulation is altered. You can answer that on your own time. The second question I want to ask you is that I would like to know if this is an example, the kind of thing we're talking about in reducing regulation.

What percentage of regulatory burden have you actually reduced in this report to the President? Do you have any kind of an idea on it?

Mr. DEAR. We can get the exact percentages for you, but I want to reiterate something that I said in my previous answer. I want to get rid of the duplicate pages, but I will not do so if we can't provide the information that the employers in the maritime and construction industries need, and I have committed myself to that in writing now that I'm in front of this committee.

In terms of what we've done in terms of the reduction of the regulatory burden, the rewriting of the consensus standards into plain English will have an enormous effect. It will make these much more easy to comply with, and not having to rely on experts.

In my written testimony, I have referred to an interpretation in the change with respect to the trenching standard for home-builders.

Certain operations around water proofing around foundation walls is pretty difficult. In fact, impossible to comply with the trenching standard. We've revised our interpretation, and we recognized that, because we were unable to tell the homebuilders what they could do to comply under the circumstances.

That's a correct and immediate change in the interpretation to resolve the problems that the small employers are having.

Ms. KELLY. Madam Chair, may I have 30 more seconds just to ask one more question?

Chairwoman MEYERS. Yes.

Ms. KELLY. I just want to say that rewriting the regulations into plain English will help those of us who are small business people comply, but unless you reduce the regulations themselves in the long run, that's really not going to help us.

We want to help you. We want a partnership with you. We want to work to make sure that our workers are safe, because every person I lose that's out on a day because they had an accident is a day that I lose their productivity in the work place, and we don't get the work done.

So, I would plead with you not only to rewrite these, but please reduce the percentage of burden upon us. Thank you.

Chairwoman MEYERS. Thank you, Ms. Kelly. Mr. Poshard.

Mr. POSHARD. Thank you, Madam Chair. Let me say that I would concur with many of the young lady's comments that she just made.

Having said that though, let me make just a few comments. Everybody keeps talking about common sense in the regulations and so on. Now, our friend who was here earlier, one of our colleagues here in the House, a dentist, had talked about one of his objections to OSHA was the fact that they required him to build a room to launder clothes, and so on.

If you enter the 19th Congressional District in the State of Illinois, and did an absolute scientific survey of the public, and asked them if they thought people who worked in a dentist office around patients all day should come to work in their work gowns that they are going to be working in all day, I guarantee you that 95 percent of them would say absolutely not.

Now, it's a common sense regulation to say that people who work around health care professions, that they come to work in their civilian clothes and they change into, or drape themselves in the work gowns that they are going to be working with during the day.

But they don't take their children to school in them in the morning, and they don't stop off at the corner grocery store on the way to the workshop. So, you know, let's be real, too. We have a responsibility here to be common sense in our approach to things also.

Look, I'm a Democrat, and I have an 85 percent voting record with the Concord Coalition in cutting Government spending, and I was one of the Democrats that won a Chamber of Commerce Spirit of Democrats Award this year. I'm not an air head person out here trying to make a lot of nonsense. Here is the thing.

Chairwoman MEYERS. We're working on you.

Mr. POSHARD. Here is the point. Please understand what I'm saying here. You know, I have found these all the time, and I hear people get up, and, you know, every comment is about these egg



headed nut cases that worked not in our Congress, but in our agencies as bureaucrats, and that are making all these laws.

Some 21-year old kid stood up there and made a law. I'm the professional, and I should know what's going on. The people who worked in our bureaucratic agencies I have found on great measure to be highly professional people, and who want to do the right thing.

They just don't sit in the absence of any comment or referencing the views of the people who they are working for, and make rules and regulations against the American people.

Every time I run for my job, and run against this institution, or run against those agencies that seek to serve the people, and you in your capacity as business people perpetuate those kinds of untrue rumors, we do a great disservice to our Government, and we cause the public criticism out there that is tearing the country to shreds right now.

Are there regulations that are overreached, and are there regulations that are nonsensical? Yes. Let's work together and get rid of them, but for god's sake let's don't perpetuate rumors that are tearing this country to shreds.

We have a responsibility to our society, too. Now, the Ballenger bill, and Cass is a dear friend, has a lot of things in it that I would personally support. But I live in coal mining country. For generations I watched people go down into those mines, and get black lung when they are 35 years old, and come back up, and die at a young age, and have nothing left for their wives and their children, or anything else.

Were it not for the mine safety and health regulations in those mines, that have air vents at the face of the mine to keep the coal dust away, and that say that we've got to protect our workers, we would have people dying all the time under those circumstances.

They are good laws. This bill does away with the Mine Safety and Health Administration for crying out loud. I mean—so let's work on balance here, and do what's right. But let's don't throw the baby out with the bath water on these things.

Now, Mr. Dear—Madam Chairman, if you would just allow me an extra minute since we didn't get a first round. I'm sorry to prevail upon you for that.

But, Mr. Dear, the Environmental Protection Agency right now is going through a program where with small businesses, for a first-time violation, for a violation that was not done intentionally, or not to try to circumvent the law, and it be a criminal act, for a violation that can be cleared up within a reasonable amount of time, they're developing at the behest of this committee, they are developing rules and regulations to say that we're not going to be punitive in those circumstances.

If it's a first time violation, and if it's not intentional to break the law, and if it can be corrected within a reasonable amount of time, there is not going to be any fine. There is not going to be any penalty. There's just got to be an agreement between the Agency and the business to remediate, to correct, and that's all.

Can't we do something like that with respect to OSHA and our small businesses that's reasonable? I don't think 99 percent of the small business people in my district intend to do anything to hurt

their people. I really don't. That's why I agreed with this young lady's comments that small businesses want to protect their people.

But they also don't want to feel like somebody is going to be punitive because something not by design occurred that may jeopardize someone monetarily, or temporarily, but can be corrected. Can't we work something out in a way that maybe EPA is beginning to address that sort of thing? Just a short answer.

Mr. DEAR. We can.

Chairwoman MEYERS. Are you doing that now?

Mr. DEAR. In my opening statement there is a reference to six compliance directives which are under development, and which will implement the choice part of our initiative, the partnership or traditional enforcement.

The key is management's commitment to the safety of their program. If we see that, and there is a commitment, and there is worker participation, and it's not just a paper claim. They are really working on hazards, finding and fixing real hazards, then those firms will qualify for a lower inspection priority; and higher compliance assistance priority, up to 100 percent litigation penalties.

We're going to expand the reduction in penalties that we already provide for small businesses. We're going to increase the recognition, in terms of penalty reduction, for firms with effective safety and health programs. Those directives are in draft here now, and circulating them to organizations that are watching this hearing today.

So, we're very close to that, and I would like to think, or say that I'm a little ahead of the EPA, in terms of actually getting that on the ground to where employers are.

Mr. POSHARD. This is real substantive stuff. I mean, we're not just going to get rid of duplication, and we're not just going to get rid of things that don't make any sense. We're really going to give people a chance to work it out.

Mr. DEAR. We have one that is called quick fix, and that we have already implemented, the quick fix. It is efficient on the spot while the compliance officer is there, and it is taken care of if it is not a repeat, or not a willful violation.

But if it is something that can be corrected on the spot while the inspector is there, there is a major penalty reduction. So, these are programs that we're working on now, and it is just common sense. The trick about common sense is that it is not just common.

Chairwoman MEYERS. Mr. Stone.

Mr. STONE. Can I make one brief comment on what Mr. Dear said?

Chairwoman MEYERS. Yes.

Mr. STONE. I think we can establish and stipulate that Joe Dear is a responsible, serious, caring, and sympathetic administrator. The problem is that we're a Government of laws, and not of men. Joe Dear, when he has an opportunity some day, I think will return to the gorgeous Northwest where he's from, and enjoy that fabulous life that he had before he came to Disneyland East, and we're going to be sitting in the same situation as has been described by my colleague on the right.

Please remember that we're a Government of laws, and not of men. The American people said something in November of 1994.



We didn't say that all Government is bad, and all regulators are bad, and all employers are bad.

We said that there has to be a definitive change in the way we construct ourselves, and we need structural improvement. Not only in OSHA. It's just one in the massive fabric of what has to happen to change this country.

Chairwoman MEYERS. Thank you, Mr. Stone. Mr. Manzullo.

Mr. MANZULLO. Thank you. Mr. Dear, we're going to give you a challenge. I am going to ask the public to submit to the Chairman of this committee a list of the egregious and horrible stories that have taken place, and the rules that don't make sense.

That letter will be published in the Congressional Record. You will have an opportunity to either change the regulations, or justify their existence. Do you accept that challenge?

Mr. DEAR. Yes, I do.

Mr. MANZULLO. You're on. Let me give you two instances. Roofers now have to have a tether when working on a home. To hold the tether, you have to pound nails through the new shingles in the roof, and put holes in the roof. Roofers are tripping on tethers, and stumbling.

The roofers that I talked to don't like this, and therefore you will have the opportunity to either change the rule, or justify its existence. The second thing is this.

According to the National Performance Review, the Administration claims that, "in the past 2 years the Agency has sought to inject some simple common sense into the enforcement process," such as decreases in citations for people work violations, and that performance will not be measured by the number of citations and fines issued.

Yet, the experience of one small machine tool manufacturer, employing 35 people, located in the 16th District of Illinois, with an OSHA inspector, symbolizes the differences between Washington-speak, and the reality out in the field.

Earlier this year, this small company, which shall remain anonymous for obvious reasons, was subject to an unannounced OSHA inspection. With 2 days of interruptions in the work production schedule the manufacturer was cited for a fine of under \$1,000. What was the violation?

There was no paperwork proving that there was a formal training class for handling a particular type of hazardous material. Guess what was the hazardous material? Silica sand, which is nothing more than washed beach sand. This company uses about 50 pounds of sand each month when they occasionally sandblast machine parts.

The bags of sand even have imprinted on them, "OSHA Approved." Even though employees were wearing proper protective gear during the inspection of sandblasting equipment, this company was still cited for this paperwork violation.

According to the company president, the OSHA inspector was not wearing any protective equipment. So, the inspector was violating OSHA's own standards by walking around the shop floor in sneakers, without a hard hat, and protective goggles.

To add to this irony, the citation was approximately one paragraph of a lengthy document. The rest of the document described

the procedure on how the company could receive a discount on the fine if they paid immediately, and the appeal process if they disagreed with the citation.

The company president said to me that OSHA, "seemed more interested in collecting fines than in helping me. They are more interested in paperwork than in instructing me on promoting work place safety.

This is a company that has been in business for more than 30 years, and never had a life threatening on the job injury, but the OSHA inspector treated this businessman like he was a bad guy. Now, I could go on and on and on. I represent a city that has 1,500 factories in the entire Congressional District. Of 980 factories in the city of Rockford, 878 have less than 100 employees. OSHA is a nightmare.

I don't care how you look at it. There are people walking around the place who seem to be the Gods of industry. When they come in, bursting their chest out announcing they are here, and that they are the ones who are going to tell American manufacturers what to do.

These are the types of letters we receive, one after the other. It's not just an isolated case. You're at the top, and many times you become insulated.

But one of the other things also we would like to do is in the letter—is to fire these type of OSHA employees. Sure, something happened in November. People had it to here with regulations. They pay too darn many taxes for a Government that was giving them too little in return. But what bothers me is this. Every single agency that we have had before this Small Business Committee has suddenly been reinvented and reinterpreted, working very, very smoothly.

But according to the experience that we see, things aren't getting any better. What you are trying to do is not working it's way all the way down the line. I have a question to ask you. Why are small amounts of sand considered a hazardous material, and do you have any plans to close the beaches this summer because the wind may kick up some sand, and people could breath in a hazardous material?

Mr. DEAR. Are you familiar with silicosis?

Mr. MANZULLO. Yes, I am.

Mr. DEAR. It's a fatal lung disease.

Mr. MANZULLO. I understand that.

Mr. DEAR. That's why there is a silica warning.

Mr. MANZULLO. I understand that.

Mr. DEAR. I mean, sandblasting is a hazardous operation.

Mr. MANZULLO. But the workers were wearing their protective gear. The issue is that the fine was imposed because there had not been a written record of a formal training class on handling silica sand. What happened here, Mr. Dear, goes against exactly what you said earlier. You said that the new OSHA was more interested in correcting the cures than imposing fines. That's not happening to the people who I represent.

Your message has to find its way all the way down. This small amount of sand in this sandblasting operation will not cause silicosis.

Mr. DEAR. You're right. The message has to get to the field, and if employers and workers don't observe and experience the new OSHA, then what I say and what you do will be of no consequence.

Mr. MANZULLO. They experienced a \$1,000 fine.

Mr. DEAR. If it were possible in a memorandum to change the culture of an organization that has existed for 24 years, 18 of which were under a Republican Administration, I would do it. I don't think that will work. I'm working as hard as I can to make it as clear as it can be what I expect people in OSHA to do.

Now, if one of our people doesn't perform well, I don't think that person should be fired. They should be coached, and they should be counseled, and they should look at the leadership, and how the organization—

Mr. MANZULLO. But if the employer was fined for violating the standard, then the employee also should be punished. That's a double-standard. This particular employee of the Federal Government working for OSHA, violated the OSHA standard herself.

She went in there and she imposed the fine on the employer who was following the standard, but just didn't happen to have a written procedure for it. That's what's unfair about it.

I don't think you grasp that. I really don't think so. I know that you're trying to, but I just don't think that you grasp what it means for these small business people, for a company of 35 people to be shut down for 2 whole days while the OSHA inspector walked around without the goggles and the hard hat herself.

Mr. DEAR. Let me check into that particular inspection. That is a clear, direct violation of OSHA policy, and if that is in fact the case, then we will take appropriate action. But you don't get a culture change by going to just one person. You go by how you direct the organization, in terms of what performance is desired, and how personnel are evaluated in terms of how they perform.

If we evaluate people on how many violations they find in their inspections, then guess what? They find a lot of violations per inspection, which may or may not relate to serious health and safety conditions. I changed that performance goal on October 1. We've changed the performance evaluation.

Mr. MANZULLO. This happened in the spring. This just happened a few months ago.

Mr. DEAR. In 1990, OSHA did 5,000 citations for failure to have a poster up. In the last quarter, we did one, a repeat violation. It is possible to change. The number of citations for posters, and what you and I would call paperwork violations has declined rapidly. It hasn't hit zero, but it is way down this year, and I would be happy to submit the chart for the record that demonstrates that.

Mr. MANZULLO. This was a paperwork violation. All I can tell you is based upon what our constituents are telling us. Your message has not worked its way down.

Chairwoman MEYERS. Mr. Dear, I think I would like to say on behalf of the committee that we would like to have that information about paperwork violations. Mr. Bartlett.

Mr. BARTLETT. Thank you very much. I might suggest to my colleague that he might be thankful that we don't get all the Government that we pay for considering what the Government does to us



rather than for us. Before I forget, I'd like to have a little table put up here.

Mr. Coratolo mentioned the regulations of restaurant people. There they are, from A to Z. You're a small business person, with a handful of employees, and those are the regulations that you're beset with. You know, that's flat out ridiculous.

Chairwoman MEYERS. That's not just OSHA, but all Federal Regulations?

Mr. BARTLETT. This is all of the paperwork, and all of the regulations that a small businessman who runs a restaurant is challenged with. I come from another life where part of my time I was a small businessman. I did land development, and I did home building, and so I can really empathize with a lot of you.

One of our colleagues mentioned about emasculating OSHA. I would suggest that this is a good place to start. But without a true conversion of heart, even OSHA as a unit is not going to be satisfactory. They are far too intrusive, and far too abusive.

Someone else mentioned that we want to err on the side of safety. I would suggest that we ought to err on the side of sanity, and that would be a nice change.

I just want to put kind of where we are in perspective here. One of the things that I did in my past life was to work for the Navy developing an ejection seat. These are the rocket seats for aircraft, fighter aircraft. We developed those to a 95 percent envelope.

What that meant is that 95 percent of the pilots that ejected would live. That means that 5 percent would die. You were asked why don't you develop to a 100 percent envelope and let's save all of our pilots. Well, the answer, of course, is that you can't do that. If you're upside down, and 20 feet over the deck, and you eject, you're dead.

Well, why not develop a 99 percent envelope? Well, we might do that, but to develop it to a 99 percent envelope would cost 10 times as much as developing to a 95 percent envelope, and the Navy doesn't have all the money in the Universe.

We need to use our money to do the most good, and the most people, and have the most effective fighting force that we can have, and so we developed it to a 95 percent envelope. Let me give you another example. You have all seen professional car racing, and you have seen them crash at 200 miles an hour, and the ball of fire.

They put the fire out, and they open the door, and the driver walks out of the car frequently, and relatively unhurt. We lose almost 50,000 people a year in deaths due to auto accidents.

It's very clear that if we fitted each of our cars like the race car, and dressed each of our drivers like the racing driver, and we put on a flame suit, and put on a crash helmet, and strap yourself in a steel cage when you go to the corner convenience store, we're going to reduce our auto deaths almost to zero. Why haven't we done that?

I might suggest by the way that we have roughly 50,000 auto deaths a year, and you have 6,241 deaths that you are dealing with a year, and 40 percent of those are automotive accidents, on the job automotive accidents, and about 20 percent of them I understand are violence—fights, murder, suicide, and so forth.

That leaves really only 40 percent of those that you are dealing with, and 40 percent of 6,241 are not a large number compared with 50,000 people dying in auto accidents. I would suggest certainly that OSHA will save lives, but at what cost?

We could save all sorts of lives in automobiles, but at what cost? And Americans, if they made a cost benefit analysis—and you don't have to tell common sense people what it would cost to do a benefit analysis. If they just decided that the cost of having a steel cage in their car, and putting on a flame suit, and putting on a crash helmet, that the benefit that you would derive from that is not worth the cost of that.

I would suggest that most of the OSHA regulations are the equivalent of putting on your crash helmets, and strapping yourself in this steel cage in your car. We need common sense here.

If you are really concerned about deaths—last year, 419,000 people died directly as a result of cigarette smoking. You know, what are you doing about that. Society has decided that to change that is not worth the cost of changing it. You know, I just want to put this in context.

Nobody wants an unsafe work place. You know, I was the first person in the world to not want an injury among my people. You know, they weren't there today to do their jobs, and if I hired somebody else, they weren't a part of the work crew, and they weren't going to do it effectively.

If we applied cost benefit analysis, most of your regulations would go away; and if we applied good science, or common sense, a whole bunch more would go away.

Many of you use relative risk. Some of the things that you are protecting against are pretty much the equivalent of being struck by lightning on the golf course on a clear day. Now, that can happen, but that's not a big risk.

If we applied these common sense things to what we are doing, and then if your civil servants acted like if they really were civil, and behaved like they were servants, then I think we would all get along very well.

But I just think that we have a million miles to go to bring this regulatory agency—and it's just one of them, but to bring this regulatory agency where common sense America thinks it ought to go. Sorry, I used up my time, and you can answer it on your own time.

Mr. DEAR. Might I just take one moment. The question here is not ends, but it's the means to accomplish that end. At one time this country was common sense and women couldn't vote. But our sense of common sense may change over time. OSHA regulations are developed in analyzing risk.

When we developed a standard on ethane oxide, which is used to sterilize equipment, the relative risk was estimated to be 1 in 10. Not one in a thousand, or not one in a million, and not like in these other regulations that you've heard about.

We do cost benefit analysis. We do not reduce the protection of the health standards solely on the basis of economics, but we evaluate for economic and technical feasibility on every standard we've done.

Now, I believe, and I am hopeful that the regulatory reform that will be ultimately produced will assist in improving the quality of

risk assessment and cost benefit analysis. We are going to be evaluating the Regulatory Flexibility Act changes that this committee was responsible for, and that will help in estimating the impacts on the small business, and mitigating the standards by increasing flexibility, in terms of approaches.

But, sir, these standards really do protect people. There is some justification for a 50 micrograms per dekaliter in a blood standard in worker's blood, because if it gets above that, irreversible brain and kidney damage results. There is a lot behind these standards, and they make a huge difference.

Most employers want to know what they are supposed to do. They just need some flexibility in how to do it, and they need some recognition when they try. They need some help. They don't need to be assumed always to be wrong or not caring.

Mr. BARTLETT. That makes common sense. Just one comment, and then I'm through. You know, I built houses and sold them for under \$60,000. 10 years ago there wasn't a house in Frederick County, Maryland that sold for over \$100,000. Today, you can't buy a house for less than \$100,000.

One of our boys just got married. The American dream of getting married, and buying a home is disappearing. We have priced these houses beyond their ability to buy a house. You have done that, and we have done that in the Congress, and we've got to change this.

These houses cost that much more primarily because of regulations at every level, and not just you, and not just EPA, but the county people, and the State people, and everybody else.

We really need to stop and take a look at where we are. When you work 189 days to pay your taxes, and 175 days for yourself, you have just got to conclude that there is something fundamentally and basically wrong, and we've got to stop and take a look at where we are, and where we came from, and where we have got to go to get back to where we ought to be. Thank you very much.

Chairwoman MEYERS. Thank you, Mr. Bartlett. Mr. Torkildsen.

Mr. TORKILDSEN. Thank you, Madam Chair; and I thank the witnesses for their testimony. A few points. I come to this committee with the perspective of having served as the Commissioner of Labor and Industries for the Commonwealth of Massachusetts, and so I can understand some of the points that the witnesses are making.

But I can also understand what many of my colleagues are saying about frustration and the outright anger that is out there, because for at least recently many OSHA inspectors viewed their jobs, or appeared to employers that they view their job as a, "got you mentality."

Any time that you find any violation, they would assess fines that were sometimes what I would consider quite exorbitant for the circumstances involved.

In some cases with my constituents, I knew that they were able to appeal and at least get the fine reduced, but you would be talking fines in the thousands of dollars, even though there was no injury involved, and treating employers that way to me is backwards.

For the comments that I have heard about trying to get OSHA into a more positive line, or how do we educate employers on safe



standards, to me that's far more of what is needed, instead of simply having an agency that will penalize you.

The comments that you made on lead paint, or something to that effect are very real and hazardous, and people to this day don't understand it. Yet at the same time, we treat presidential buildings and commercial buildings differently.

We also have a half-hazard State regulation there, and part of the anger and confusion I think is coming where we have Federal and State regulations that clearly are not in sync with one another, and employers do feel like they are being pulled in different directions.

The point that I would like to stress and ask for your response is where else do you move to change that culture, because in cultural changes, the most difficult type of change to enact anywhere, and certainly in a regulatory body, both from the perspective of being someone who has to make and force regulations, as well as those of you who are testifying who have to live by them.

I mean, what suggestions can you offer us that say how can we change his mindset so that it is not a back room mentality, but where people are working together. I think every employer wants to protect their employees. I mean, they are going to see the net results. The Workers Comp rates will go down, and the rest will go down as a safe environment for their employees, and I think virtually every employer wants that.

But how can we coordinate that with our regulators so that we can get to that point without this anger that has been going on for quite a few years.

Mr. DEAR. We need to do exactly what the most successful companies in America are doing. We need to ask our front line workers how can you do your job better. We need to ask our customers, survey them on what do you expect, and how well did we do in delivering that.

We need to find the principles of continuous quality improvement in our work processes, and take out the nonvalue item steps. We need to use effective measures of performance. We change how we evaluate the performance of our employees; and we need to get beyond a completely reactive strategy of responding to complaints when we are doing accident investigations.

We need to get proactive, and to transplant the notions of community policing to problem oriented, and problem solving approach, and get to its causes. Let me give you one illustration of how we are trying to do that.

Well, let me say this first. We are applying that approach, taking a page from successful industry, in OSHA now, and we have been getting assistance at no cost from a major business consulting organization which is teaching the methods they developed from some of the best companies in America.

We designed a new approach in our field offices, and we have pilot tested in New Jersey, and in Atlanta, Georgia; and we have converted five more offices to that new way of working, and time and funds permitting, I will do all 67 OSHA offices.

If I could, Madam Chair, I would like to introduce some letters from some of our customers in those offices that are actually beginning to see that new OSHA work. The problem solving approach

says there has got to be a better way than just to assuming a physical compliance inspection of the work place is the way to get inspection.

In New Jersey, we had a problem with lead exposures in bridge workers. Now, we could have gone out and just do inspections, and gone in, entered, and inspected, and if there was a problem, issued a citation. But what we did instead was connect ourselves with the State Department of Transportation, and asked them to put the lead abatement procedures in their contracts.

We contacted the State, the New Jersey Health Department, and said provide us the data from lead blood levels of workers; and we did an education program, the DOT, the Health Department, and OSHA, of the contractors that bid on the jobs. In 18 months, the cases of blood poisoning in those bridge workers went from 1 in 4, to 1 in 20.

Now, there was some enforcement there, but primarily it was getting people together, and saying blood poisoning is bad, and what can we do. I want to teach those methods to all of the folks in OSHA. As I said earlier, if I could do it with a memo, saying now hear this, I would do it.

But as you know from your agency management experience, you've got to work with people. You've got to give them a chance to have their say, their thoughts, and get them focused on things that really make a difference.

As fast as I can possibly do this, I will, but we're working on it, and it is happening on the ground, and it is becoming real, and everybody is gaining because we can do that.

Mr. STONE. Can I, Madam Chair, just kind of comment on that?

Chairwoman MEYERS. Yes. Mr. Stone.

Mr. STONE. I'm going to have to rudely excuse myself because I'm afraid that there aren't many flights to Louisville, and so forth. But the sum of your question, Mr. Torkildsen, and I believe your answer, Mr. Dear, is that I don't see how it can be achieved without the passage of the TEAM Act.

Again, we're a Government of law and not of men. I guess we want to emphasize that. I don't see how those things could possibly happen where employee involvement is currently. Some of the things that Mr. Dear said in his opening comments, and to your question, in the very building that he reports to work, the NLRB, and the Electromation, and the Dupont cases determined that you couldn't talk to your employees and seek all these ideas under certain conditions, because you theoretically were involved in developing a company union.

So, we have got to recognize that the good will of a very excellent public servant, Joe Dear, is not enough to guarantee the next generation of business people, and the next generation of employees, the kind of safety you are talking about.

Mr. TORKILDSEN. If anyone else, especially on the business side, would like to respond, I also would appreciate your comments on that.

Mr. PALMER. I'd like to.

Mr. TORKILDSEN. All right.

Mr. PALMER. I worked within OSHA through my advisory committee experience, and I would like to make a statement. There are

a tremendous amount of extremely intelligent, hardworking, well-meaning people there. They do work hard, and they do their very best for the American work place from their point of view at all times.

I did not find a fool working at the Department of Labor at all while I was there. That said, they do work in a vacuum. The New Jersey bridge experience is unique, period. If it could become the rules, then you'll see lead poisoning drop dramatically.

At the same time this was going on, I believe in Pennsylvania they had been handing out \$6 million in bridge exposure fines because there is no education, and there is no consultation, and there is not the ability to get it.

Like I said in my testimony, if we had affordable, available, efficient, accurate consultation on safety, and there is no better place to get it than the people who know these rules, OSHA. We can have a culture change, and it will stay until we have a new Administration or a different Assistant Secretary.

But if we have a legislative change that codifies this culture change, and codifies this partnership, we've got a better America. We've got a great work place. We've got a good start. I applaud Mr. Dear's efforts. I applaud that New Jersey Program. It is saving lives, and it is doing good.

But it is unique. Let's make it the rule though, and not the exception.

Chairwoman MEYERS. Mr. McGeady.

Mr. MCGEADY. Thank you, Madam Chairman. Just a very brief comment on two points, responding to Mr. Torkildsen. We in our company, and we are just about 50 people, ignored the NLRB or NLRA aspects by simply having a town meeting in our shop after hours, and invited anybody that wanted to come, and I defy any National Labor Relations Board inspector to say that that was in any violation of NLRA, and out of that developed a number of things that have been successful.

Second, and again Mr. Dear is aware of this because he and I have spoken privately, the message is not getting to the field. In a recent experience in our company, we were moving to a different State two workmen. I tried to find out what was going on, and what OSHA was interested in, in that State.

Parenthetically, we have to be careful that in many States there are good consultation programs. Maryland is one of them, but it stops at the water's edge. Maryland inspectors won't get their feet wet. They rely on OSHA beyond that, and that's proper. That's the way it should be.

But OSHA won't do consultation in Maryland. Now, Mr. Dear assures me that that is going to change, and I believe him. But responding to what my colleagues to my left have said, if he chooses to go back to Washington—

Mr. STONE. The State of Washington.

Mr. MCGEADY. The State of Washington, yes. If he goes back to the sovereign State of Washington—and that's a State, and not a Commonwealth, right? And as I said to him earlier, he's got to understand the paranoia that we have on this side of the table after being hit about the head and shoulders with baseball bats for 25 years.



Chairwoman MEYERS. Other comments?

Mr. MCGEADY. Thank you, Madam Chair.

Chairwoman MEYERS. Mr. Longley.

Mr. LONGLEY. Thank you, Madam Chairman. Mr. Dear, has there been a review of the regulations? I missed part of the hearing, but has the Agency completed, or has your office completed the review of your own regulations?

Mr. DEAR. Yes.

Mr. LONGLEY. Is that report available?

Mr. DEAR. It will be. It is released by the White House.

Mr. LONGLEY. Will you be eliminating any regulations?

Mr. DEAR. We're going to do a rewrite of 625 pages of consensus standards that were adopted in whole in 1971 without a public hearing. The product of that will be a great simplification and conversion of highly technical and difficult to understand language into plain English.

A number of our other existing regulatory initiatives, in the construction industry in particular, involve modernization and simplification standards. Some circumstances were used in negotiated rule making to accomplish that for steel erection, and those were used in less formal forms of rule making.

We will be soon, I hope, proposing simplifications to the record keeping standards, that will reduce the burden, as well as to the accuracy, of statistics. So, those are a number of examples.

Mr. LONGLEY. But when will that be coming out?

Mr. DEAR. Well, the record keeping proposal is in clearance and so I hope to get it out this year.

Mr. LONGLEY. Let me ask you a couple of questions about the Maine 200 Program. The business community is something I am a little familiar with in that State. Is there any kind of study or report on the results of that program?

Mr. DEAR. We have internal generated reports, and as I indicated in my testimony, some data in response to that.

Mr. LONGLEY. If you could make that available to my office, I would appreciate it. I have a question that you may not know the answer to, but when you took the top 200 companies, was it just based on the records of work place injuries and illnesses, did you correlate that to the list of the top 200 employers in the State?

Mr. DEAR. It's a high degree of conversion. We took the number of claims, and not a rate, and so it tended to get the top employers in the State. So, in the variations program we've done in Wisconsin, we aimed it just at manufacturers, and we took a rate.

Maine has been an enormously instructive and heartening experience. When I say we are going to nationalize the program, it's the concept, and not every detail.

Mr. LONGLEY. Well, there is a piece that I think is great, and there is another piece that I'm missing which concerns me, and that's what I'm trying to get at; and it comes back to a comment that Congressman Manzullo made a minute ago, and I want to zero in on what I believe is an attitude, an us and them attitude; that we're the good guys, and business is the bad guy.

There isn't any better example of that that I have heard of, assuming that the Congressman's story is correct, than a business that is working with 99 percent weight in compliance, and an em-

ployee, who does this full-time for a living, if in fact his facts are correct, is totally in violation to every one of them, and there is a sense maybe there that he or she didn't have to apply the same rules that the employer had to apply, number one; and, number two, that they didn't have the standards, and I find that egregious, particularly giving somebody under the law, and the law would hold her professional expertise to a higher standard than a gentleman with no experience, or less experience.

So, again, I recognize that you're going to look into the facts of that, and I respect that. But part of what I'm concerned with is that when I saw the reference to the fact that the top 200 employers were Maine's highest known with work place injuries and illnesses.

I know that it's easy to take statistics and suddenly draw conclusions that may not be merited, and my guess, or my instinct tells me that that may just very well correspond with the top 200 employers in the State.

What I am driving at with that is that to me the issue isn't trying to find the guilty necessarily. I think there is a need to educate people to help safety standards of the work place on a general basis.

I like the concept of making that kind of program available to people if they want to participate, and it seems to me that would be a tremendous incentive to get business cooperation and participation.

Not only are you getting expertise, you're not going to be needlessly cited for sanctions, and I would submit that frankly I get mixed results, and I have heard some very positive comments about the work that your agency is doing in my State, along with others who aren't as complimentary.

But it seems to me that we need to set a positive standard, and not just unnecessarily focusing on negative and sanctionary standards. The final point that I want to make, and this may surprise you, I've done inspections, probably 5 years worth of inspections.

The difference was that I was in the military, and I was a Marine Corps officer, and I think I can state very fairly that I held people to very high standards. But I also learned that there is a judgment that has to be built into that.

I will be very candid. The private sector in my opinion—I coped with half of the regulations in the military that a lot of my business constituents had to cope with in the private sector.

Not only is the burden at least twice what I had to see done in the military most recently during Desert Storm. But you are dealing with an adversary client, and you are dealing with an us-them mentality, and you're also dealing with people who may not have the same degree of responsibility for the total picture.

I knew that I couldn't get my job done as an officer if I didn't have sergeants and corporals that I trusted to use their judgment, because if they didn't follow the rules to the letter, somebody was going to get killed; and thankfully in the military, we have enough history and tradition, and a culture, that respects the fact that the legal authority over life or welfare of another individual is a very serious responsibility.

There is an element of training that is built into the culture that causes people to recognize that, and there is a joke that any veteran would identify with this; that the most dangerous weapon in the American military arsenal is a brand new Second Lieutenant with a compass.

Because it's somebody who has been very highly trained, but has absolutely no experience or judgment. So, what I'm trying to say, and just adding to this, is that I appreciate your willingness to be constructive and address these issues.

I recognize these are sacred cows to many people, but I think you need to work toward an environment that's much more constructive and positive, as opposed to be working toward sanctions and judgment of one business by people with no experience, and adjudging a business by people who are presumed to know their job, because as they say, if you want to understand what a man or woman has to cope with, try and walk a mile in their shoes. Thank you.

Chairwoman MEYERS. Thank you very much Mr. Longley, for an excellent statement.

Mr. DEAR. If I may, Madam Chair, respond.

Chairwoman MEYERS. All right.

Mr. DEAR. There are many employers that taught OSHA folks a lot. When I came in, and this was ready to go, I said start it. Just do it. This sounds great. But of the 200 companies, 198 of them said, yeah, we want to be your partner. They found more hazards than we could have.

Now, they found them because they were looking where we couldn't get to, but they knew what the problems were. The manager of the mill at S.D. Warren said that OSHA would have found 4,000 violations if they had done a wall-to-wall at this mill. He found 17,000.

He said that if we had done the 4,000 violations, there would have been huge penalties, and we would have been litigating that for 18 months while nothing happened. But under the Maine 200 Program, he had his workers involved, and he fixed them all.

Mr. LONGLEY. But let me add something to that. You're missing an important point. There was one business in particular that was abusive in its compliments for the Agency. I have to be honest and tell you that they employ 300 people, and this is a full-time safety director, with staff, and they saw the OSHA rules and regulations as a competitive advantage, not just in terms of safety and a healthy work place.

But they saw it as something that they could hold over their competitors who were smaller and less able to afford that level of overhead. They knew that the work force, that there are ways of making complaints, and that they are ways of manipulating assessment, where they could turn it not just from a positive constructive standpoint, but from a very negative and destructive standpoint against the competitor, and I think there is an aspect there where we have got to be dealing with what we can afford.

We've got to have a system that respects the fact that people might want to try to do their best, and we need to be careful where we fault them for where they go wrong, and try to compliment them for where they go right.



But, again, I'm dealing with a State and the reason why I'm so familiar with those numbers is that frankly we have 28,000 or 30,000, quote, businesses, in the State of Maine. But when you get right down to it, something like 50 to 60 percent of the jobs, they go to about 5 or 10 percent of the number.

There is a heck of an underground economy of people who cannot afford to comply with anything, and who are intent to barely get food on the table, and that's also something that is a safety issue.

Chairwoman MEYERS. I have found that if I wait long enough, somebody always asks the question that I was going to ask, and I think Mr. Longley has just touched on it. My question, Mr. Dear, is of the Maine 200 program, how many were small businesses?

I'm asking in relation to Mr. Longley's comments. I think sometimes regulations fall much harder on small businesses for the reasons that they don't have the office managers, and the engineers, and the accountants, and everything else on their staff, or available to them.

They're operating on a very narrow margin, and a lot of that regulatory work is done by the owner himself or herself. How many of those were small businesses?

Mr. DEAR. About 50 to 200 would qualify under the broader definitions of small. Well, under 200. Now, the selection of the Maine 200 was by the number of Workers Compensation claims.

Chairwoman MEYERS. So, 50 were small businesses?

Mr. DEAR. Yes, 50 were under 200 employees.

Chairwoman MEYERS. Go ahead.

Mr. DEAR. But again the selection by the number of claims, and not rate. So, it tended to bias the selections toward larger employers. Those employers supported a third of the Maine work force, and they accounted for 45 percent of all of the injuries reported to the State Workers Compensation Agency.

So, we've got a lot of leverage there. But your question really deals with firms that don't have a size, and don't have the infrastructure of experts, or compliance of experts to assist them. That's why the consultation program exists. We've asked for additional money in the President's budget for 1996.

The Appropriations Committee action cut most of OSHA, but it did increase the support to the consultation program, and that will allow us to serve more customers.

We are also working with the voluntary participant program association, which are the VPP companies, and they tend to be large. But they have established a management program for smaller businesses in the area. They teamed up with the American Industrial Hygiene Association, and the American Society of Safety Engineers, and the American Occupational Health and Nurses Association to develop a pro bono, or very low cost assistance program for small business, on how do you develop a safety and health program, because that's the key.

If that safety and health program is in the organization, with management commitment, and worker participation, and really dealing with real hazards, we have what we need. We have what we want from a regulatory perspective. It's an internal responsibility.

That allows us to make the adjustments, in terms of good faith, in terms of history, and penalty indication. So, the challenge for the small business is how do we make that knowledge available, and how do we make it available in a way that it doesn't pose a burden which is beyond the ability of the firms to do business.

Chairwoman MEYERS. That's what I was going to ask now. Now, some of this information could be—is probably very industry specific; and like the glass industry, I would imagine a lot of the information that you need to convey to employers and would if you could find a method to do it.

I don't know whether this would work or not, but I know that we have 900 small business development centers across the country, and they work with small businesses to help them develop management plans, and plan how to start a business financially, and keep it on track.

If they could work with OSHA on trying to get some of this information to people, there's got to be a way if everybody is dedicated to doing this. Mr. McGeedy.

Mr. MCGEADY. Madam Chairwoman, just to give the committee a little bit of a benchmark. It cost our company within the last 2 years approximately \$1,000 per person to train employees with outside trainers, because we had not the expertise to meet the current OSHA material standards.

Plus, the employee's wages for the week in question. In other words, the trainer—

Chairwoman MEYERS. What is that figure again?

Mr. MCGEADY. Approximately \$1,000 per week. They require 40 hours of training, plus an annual update, and that's a fair estimate—I mean, they crowd it into 40 hours, which they probably could teach in 20. But, nonetheless, it was good instruction, and needed to be given to the employees.

But to do that, to be able to work on hazardous material sites, cost one small business in excess of \$30,000. Plus, the employee's wages for the week. That was just to meet one OSHA hazardous material standard. It was money that was well spent.

Mr. DEAR. Hazard waste operations.

Mr. MCGEADY. Well, dealing with Chromar.

Mr. DEAR. But not hazardous communications?

Mr. MCGEADY. No, this has nothing to do with hazardous—well, it has very little to do with hazardous communications standards. There are four levels; Hazard D, C, B, and A. A is the moon suits type thing. But most of you today who will walk on your way home will walk in a Hazardous D level. So, there are still requirements that need to be met.

Mr. MANZULLO. Congress is hazardous.

Mr. MCGEADY. I will refrain from quoting Mark Twain.

Mr. MCGEADY. But those are real costs that are out there.

Chairwoman MEYERS. Well, I think that's true, and it does indicate that a business that is larger has the financial capability. Let me ask one more question, and I will say that the panel members may have questions that they want to submit in writing, and if they do, we would appreciate a response if you have the opportunity. One final question for Mr. Dear.

One of the Administration's reinvention principles is negotiate. Don't dictate. To that end, OSHA is trying to expand consensual rule making and regulatory negotiations. Now, there are usually big differences between large businesses and small businesses perspectives on the impact of regulations, and are small businesses participating in these regulatory negotiations? How do we measure whether small business is being represented in regulatory negotiations?

Mr. DEAR. Well, there we can look at who is participating, and who the business owners are that are operating, and if we've got a representative from an association. I mean, it becomes more difficult for the small business operator.

One of the questions we face in the pro bono—Small Business Assistance Program that I mentioned was that you do it on a day long program, or and you do two, half-day programs, or do you do it on Saturdays, because as Mr. Stone indicated, you are dealing with folks who are at the work place almost every day managing the affairs of the business, and so we're trying to work that out, but certainly as we use formal negotiated rule making, and the development of committees under the Federal Advisory Committee Act, or any formal consensual rule making and making sure that the voice of small business is there.

We're going to get assistance from the SBA, and the advocates office is going to help us identify participants, and we need to keep that in mind.

Chairwoman MEYERS. Now, we would appreciate that, and if there is anything that this committee can do to help as far as working with small businesses concerned, we would like to do that. I think that Mr. Manzullo has one final question.

Mr. MANZULLO. I have an interesting question. These electrical cords go underneath a thick, wool rug. Is that an OSHA violation?

Mr. DEAR. I am not your detailed—but I would note that you have covered the carpet and eliminated—you covered the wires and eliminated the tripping hazards, and I would also note that you have established a requirement that your own facilities comply with all the regulations, and have set up your own enforcement and consultation service.

Mr. MANZULLO. Well, not quite, but we're working on it. It's just the thought, because this is the type of thing where you're the answer.

Mr. MCGEADY. I'm looking at two OSHA violations from where I sit.

Mr. MANZULLO. What's that?

Mr. MCGEADY. I see at least two ungrounded power cords.

Mr. BARTLETT. Big fine.

Chairwoman MEYERS. Well, I do think that we have said that we have to comply with the rules and regulations that we make others comply with, but unfortunately that is a very recent law in Congress, and it means that we are going to have to expend some money in order to comply with all of these.

Mr. BARTLETT. There's something that I would like you to verify for me. The State of Maryland, which is not a bastion of conservatism, their legislature passed a bill that said that MOSH, which is the Maryland Occupational Safety and Health, would not fine a



business for a first offense, but they would work with them for 30 days.

Before that was signed into law, I was told by the Governor that OSHA said if you pass that law, we will decertify you, and we will come in and conduct the inspections. Can that be true?

Mr. DEAR. I sent such a letter to the Governor, yes; and requested that the agency, much like some of the provisions of H.R. 234, Cass Ballenger's bill, the Maryland law removed all discretion, in terms of when it would be appropriate to issue a sanction, and as such, it represented a deviation from the Federal statute from which we may compare their action, and I was compelled to inform the State that if they made that law change the way they had proposed, that they would be found to have a program that was not as effective as the Federal OSHA Program.

Chairwoman MEYERS. This was because of compliance with Federal law?

Mr. DEAR. They went further in the statute than the initiatives that I described to you under partnership, and common sense, because there was no discretion to issue a penalty even if the violation was extremely serious, and that's one of the defects of Mr. Ballenger's bill.

As I said, this conversation today, this is an innovation for me to appear with customers in front of an oversight hearing, and I found it to be well worth it. One I haven't had inside the beltway. You have to go out of town to meet with customers like this, and I appreciate that.

But, again, the discussion here is about means, and not ends, and everybody I think understands that when workers are healthy and safe, it changes—

Mr. BARTLETT. Would you like us to change that regulation?

Mr. DEAR. The question is going to be with respect to legislation that the—the degree to which Congress wants to put or codify some of the initiatives that we have undertaken to ensure the continuity in these initiatives.

Mr. BARTLETT. Who determines whether it is egregious?

Mr. DEAR. That's a decision by OSHA enforcement officials, and if it's an egregious case, which is a term of art for us, then I usually get involved in it.

Mr. BARTLETT. Madam Chair, just one last thing. I would like to have him come back to kind of put this in context. You have 6,241 deaths a year as I understand it from accidents in the industry. That's about half of what we had previously.

But if I make the assumption that you have reduced the deaths in all of the categories there, then you would have reduced the 40 percent of automotive kinds of deaths, and you reduced the 20 percent of violent deaths, which is fighting and hanging, and so on and so forth.

So, right now you only have about 2,500 deaths a year in accidents out there in the work place, and you would have had before roughly 5,000. 5,000 deaths is roughly just 10 percent of the number of deaths we have in automobiles.

There are 80 times more deaths than that from smoking cigarettes; and what I'm wondering is if in a cost benefit analysis here

that the farmer wouldn't have concluded that the juice ain't worth the squeezing.

There have been enormous costs to our society, and so what these numbers say is that if OSHA had done absolutely nothing, and we really want to have a safer work place, but if OSHA had done absolutely nothing, we would have today only 2,500 more deaths in the work place than we have.

That's 1/20th the number of people killed in auto accidents; and 1/167th of the number of deaths from smoking cigarettes. You really need to kind of put these things in perspective, and the cost and the benefit of it, and we need to do that in terms of society.

Chairwoman MEYERS. I wouldn't want to leave the impression that this committee thinks that if you have preventable deaths, that there are deaths that we can prevent with reasonable education, and negotiation, and by working with people, we certainly want to do that.

Mr. BARTLETT. I would concur with that 100 percent. You used the right word, reasonable.

Chairwoman MEYERS. I think my concern with OSHA has been some of the—and I don't know for sure whether they are isolated, or whether they are just absolutely routine, of the horror stories that you hear, and when I talk to people at home now, they are still not willing to give us a clean bill of health.

I say, is it getting better, and they say, well, maybe it's a little bit better. So, as long as we can keep working together and try to improve this situation. I hope that we will submit some questions to you all if you don't mind as questions occur to us, and I hope that you will stay in touch with us, because we've had a good exchange here today, and I appreciate—Mr. Dear, you know, a lot of times at these hearings the Federal Agency person, the head of the agency, comes in and testifies, and leaves, and then we hear from the of the panel of citizens who are out there.

Mr. Dear said he would happily stay and be involved in this kind of an exchange, and I know that it's not easy. So, we appreciate the distance that you have come, and we have learned from you, and we'll stay in touch. Thank you very much. The meeting is adjourned.

[Whereupon, at 5:51 p.m., the committee was adjourned, subject to the call of the Chair.]

## APPENDIX

---

**Jan Meyers**  
**Chair, House Small Business Committee**

**Opening Statement for  
Oversight Hearing on the Administration's and  
Congressional Initiatives to Reform OSHA, and their  
Impact on Small Businesses**

**July 26, 1995**

**Good afternoon. Today the Small Business Committee will hold a hearing on the Administration's and Congressional Initiatives to Reform OSHA, and their Impact on Small Businesses.**

**This is the second of what I anticipate will be a continuing series of oversight hearings which will focus upon what is actually happening to reduce paperwork and regulatory burdens upon small businesses.**

**As I mentioned during last week's hearing, Congressional oversight may not attract the press interest other legislative activities do, but I believe oversight should be a hallmark activity of the Small Business Committee. This fall we will hold hearings on EPA and IRS initiatives. My intent is that these hearings will provide the basis for the Committee to develop a report card a year from now on whether initiatives to reduce regulatory burdens on**



small businesses are working.

At the White House Conference on Small Business this past June, President Clinton spoke eloquently on his Administration's initiatives to reduce the regulatory burdens on small business. He referred to his March 1, 1995 Memorandum to Department and Agency heads to make regulatory reform a priority. Agency Heads were to read all their regulations page by page and indicate to him by June 1st which regulations they would eliminate, which they would modify, and which needed legislative attention in this reinvention exercise. He demanded performance from the Department Heads and promised results to the small business delegates.

Last week, Sally Katzen, the Administrator of OIRA and the President's "regulatory traffic cop" presented a status report on the Administration's progress to implement the President's directive. She also joined in a panel with small business representatives to discuss how to evaluate the results. I thought we had a useful dialogue between this Committee, the Administration, and the small business community. I believe there is much common ground and common sense in this approach.

Today Secretary Dear will present a progress report on OSHA's reinvention initiatives and participate in a panel with small businesses. The Reinventing OSHA Initiative in response to the President's Directive was announced May 5th and showcased at the White House Conference. I appreciate the Administration's and

Secretary Dear's willingness to contribute to this kind of forum. I have asked him and our small business witnesses to address what questions would be appropriate to ask now, and six months from now to determine whether regulatory burdens on small businesses are reducing.

Congressman Charlie Norwood will open our hearing. He brings his experience as a Dentist to his work on the Workforce Protections Subcommittee of the Committee on Economic and Educational Opportunities, where he has been actively involved in the legislative effort sponsored by Congressman Cass Ballenger to reform OSHA. Our witnesses today will be commenting on that legislative proposal as well.

Let me turn now to our Ranking Minority Member, Mr. LaFalce, for any opening statement he would wish to make.

**Committee on Small Business  
United States House of Representatives**

**July 26, 1995**

**Testimony of Representative Glenn Poshard**

Madam Chairman, thank you for holding today's hearing focusing on initiatives to reform the Occupational Safety and Health Act. I thank those appearing before the Committee, and I look forward to hearing your testimony regarding the effects OSHA legislation has had on your small businesses.

I have long advocated the critical need to examine the efficiency of federal government and cut all extraneous federal expenditures in our efforts to reach a balanced budget. Likewise, we hear that excessive federal regulations in some instances have caused a number of small businesses unnecessary loss of sometimes limited resources and revenues. However, we must be careful not to advocate reforms that will be, in the end, extremely detrimental to the American worker.

During our efforts to reform and streamline government we must not ignore the facts. Statistics show that since the implementation of the Occupational Safety and Health Act in 1970, the law has helped reduce workplace fatalities by over 50 percent.

Representing southeastern Illinois, where coal mining is the predominant industry, naturally I am particularly concerned for the safety of miners. The bill, as proposed, repeals the 1969 Federal Coal Mine Safety and Health Act. This can only have a devastating effect on the hard won safety mechanisms achieved for miners over the past 25 years. I am absolutely opposed to this proposal and want to emphasize that there is no way we should begin a process to lessen the safety requirements of the mines in this country -- an industry which encompasses one of the most dangerous occupations in the nation.

While I do agree with OSHA reform, I strongly believe worker safety covered under any of the Act's provisions cannot be compromised or weakened in any way. It is my hope that Congress and the Administration can work together to find a common-sense approach to reforming OSHA, one that puts the American worker and their safety in the workplace first.



July 26, 1995  
PUBLIC HEARING

THE HOUSE SMALL BUSINESS COMMITTEE

STATEMENT OF

**GIOVANNI CORATOLO**

PORT OF ITALY RESTAURANT  
SPRINGFIELD, VIRGINIA

ON BEHALF OF THE  
**NATIONAL RESTAURANT  
ASSOCIATION**

Madam Chairman and members of the Committee, it is a pleasure to appear before you today. My name is Giovanni Coratolo, and I am the owner of Port of Italy restaurant in Springfield, Virginia. We are a 300 seat Italian restaurant. I also serve on the Board of Directors of the National Restaurant Association, and I am speaking here today on behalf of the Association, which is the leading trade group for the nation's 739,000 foodservice establishments. Over three-fourths of foodservice operators are small businesses with gross annual sales of \$500,000 or less.

I have owned the Port of Italy restaurant for 25 years. It is my job, and it is my pride. The restaurant business is a difficult industry in which to earn a living. I regularly spend 75 hours a week in the restaurant. When I was growing up, I was always told that small business people were the backbone of this country. They were what made America great. Unfortunately, government regulation is breaking our backs. When the federal, state, and local governments, with their thousands of employees, generate hundreds of thousands of pages of regulations, I am the one who has to bear the brunt of their requirements.

As a small business owner, my time and resources are scarce. My responsibilities are endless. At my restaurant, I am the engineering department, the marketing department, the personnel department, and the legal department. I work with my cooks, and I train my service personnel. If you came to dinner in my restaurant, there is a good chance I would seat you. With the responsibility of implementing the wealth of federal, state, and local regulations, it is amazing I am able to produce a quality dinner for my patrons!

I believe the foodservice industry is second only to the nuclear power industry in terms of the number of regulations and regulatory agencies. Regulation is something we are well aware of. In our industry, one regulation never replaces another but is instead added to the already existing list. Well-intentioned bureaucrats only provide a multitude of complex requirements which are confusing and contradictory for well-intentioned business people to decipher. The stack of regulations never gets smaller; it only grows.

I realize this hearing is about OSHA, so let me discuss this particular agency. My biggest asset in my business is healthy employees. Personally, we have never had one worker's compensation claim --- and that's with over \$1.5 million in payroll over the years.

Restaurants have to contend with a number of OSHA rules: the Hazard Communication Standard, the Bloodborne Pathogen Standard, the Lockout/Tagout Standard, the Personal Protective Equipment standard, and the general duty clause. Each of these regulations is a complex document with subjective interpretations --- but clearly defined penalties for their breach. These regulations require various actions for compliance. Just a few examples: those employees who chop vegetables should wear slash-resistant gloves; cleaning agents such as common handsoap must contain a written warning; and if someone should get a bloody nose, the bloody waste should be handled properly and disposed of separately.

Again I will stress that the intentions behind these individual regulations are not bad. However, put yourself in the shoes of the restaurant owner who was cited for violation of the Hazard Communication Standard because he did not have a *written* plan on the premises. His principal violation: the transfer of window cleaner from its original gallon jug to a spray bottle

which was not labeled as to content and warning. This is despite the fact that employees stated they were familiar with the contents of the bottle and the cautions for its use. It's not so much that these regulatory "horror stories" happen all the time, but that every small business owner knows that it could have happened to them. To those of us subjected to the daily pressures of running a small business, these types of minor violations resulting in major fines seems to obscure the intent of the original regulation.

As we speak here today, OSHA is contemplating another layer of complex regulation for me to understand and implement in my workplace. These are regulations which would require businesses to ban smoking as well as to provide a written indoor air contaminants plan. I was going to turn this regulation over to my engineering department, but I wasn't in at the time!

Obviously, restaurants are different from other businesses in regard to smoking because it is our customers who smoke. The National Restaurant Association estimates a smoking ban would cost foodservice operators \$18.2 billion in lost sales. The heaviest impact will be felt in the bar and tavern segment -- largely because patrons who smoke will not stay as long. There are times when patrons utilize our smoking sections during lunch specifically because they can't smoke at their workplace.

Some OSHA officials argue that this proposal does not ban smoking because smoking is allowed in a separately ventilated room. I do not know of any small business owner who can afford to construct a room with a separate ventilation system, particularly when the OSHA proposal will not allow people to be served or tables to be bussed as long as anyone in the room is smoking. Therefore, the OSHA proposal is in reality a ban on smoking.

While tobacco smoke gets most of the attention, the proposal is just as burdensome with regard to the other indoor air requirements. In an effort to control such ambiguous ailments as "sick building syndrome" and "building related illness," OSHA would require all worksites to have a written indoor air compliance plan, a designated employee trained in the operation of the ventilation system, and monitoring of the relative humidity and carbon dioxide levels. Very few restaurant owners will be able to comply unless they contract out with an industrial hygienist who will provide -- for a fee -- a written plan, training, and monitoring. This proposed rule focuses entirely on written plans and administrative requirements without setting any identifiable goals for compliance.

The OSHA indoor air proposal is the type of regulation which leads small business people like me to say "enough is enough." In my opinion, it shows the pendulum has swung too far, and we need major reform in OSHA's mission.

This brings me to my last point. When I think of OSHA, I think of the age-old joke told by small business people --- "Hi! I'm from the government, and I'm here to help you." Inspections are too often used by disgruntled employees as revenge against their employers. As a well-intentioned business owner, I am suddenly confronted with a regulatory agency that presumes me guilty until I can be proven innocent. There are way too many "sticks" in the current system, and not enough "carrots."



The members of this Committee have heard from the voters, and thankfully you are having hearings like this one today. I encourage you to follow through on transforming OSHA. I understand Representative Cass Ballenger has introduced a bill (H.R. 1834) which will restore some balance to OSHA by stressing more consultation and less confrontation. While I am not an expert on all the specifics in this bill, it seems to me that it moves OSHA in the right direction. I encourage you to follow through because I do not believe OSHA's mentality will change without impetus from Congress.

Please make the phrase --- "Hi! I'm from the government, and I'm here to help you" - a reality and not a joke.

Thank you, Madam Chairman.

# 15 Reasons Restaurateurs Worry About More Government Regulation

People who don't run a business are often surprised at the extent of the government's impact on business. Restaurateurs aren't. Laws and regulations have become a fact of daily life in the restaurant industry.

Foodservice operators who feel more bogged down than ever in government rules and government forms aren't just imagining it. Over the past ten years, restaurateurs have seen a tremendous increase in the number of federal regulations that affect restaurateurs.

Following are 15 changes the U.S. Congress has made just since 1985.

Just becoming familiar with the laws is a daunting task. But consider the costs of compliance—in time and in money. And consider the liability if a business owner misses something. If it's not government audits or penalties, it's employee or customer lawsuits.

It's no wonder restaurateurs worry about more government regulation!

- 
- 15 Business Meal.** Tax deductibility drops to 50% beginning in 1994. (*Omnibus Budget Reconciliation Act of 1993*)
  - 14 Family and Medical Leave.** Employers of 50 or more must provide 12 weeks of unpaid job-protected family or medical leave to employees. (*Family and Medical Leave Act of 1993*)
  - 13 Discrimination Penalties.** Employees get expanded rights to sue employers in jury trials for discrimination. (*Civil Rights Act of 1991*)
  - 12 Teen Labor Penalties.** Businesses that violate teen labor laws face \$10,000 maximum penalty, up from \$1,000. (*Omnibus Budget Reconciliation Act of 1990*)
  - 11 Alcohol Taxes.** Businesses must pay inventory tax and higher federal excise taxes on alcohol—8% increase for liquor, 100% for beer, 600% for wine. (*Omnibus Budget Reconciliation Act of 1990*)
  - 10 Menu Labeling.** Restaurants must meet new federal criteria when they describe foods with such terms as "low-cal" or "light," beginning in 1995. (*Nutrition Labeling and Education Act of 1990*)
  - 9 ADA.** Businesses must make facilities more accessible to people with disabilities and take steps to accommodate employees with disabilities. (*Americans With Disabilities Act of 1990*)
  - 8 Minimum Wage.** Employers must begin paying higher minimum wage of \$3.80 in 1990 and \$4.25 in 1991. (*Fair Labor Standards Act Amendments of 1989*)
  - 7 Plant Closings.** Employers of 100 or more must give 60 days' advance notice of closings. (*Worker Adjustment and Retraining Notification Act of 1988*)
  - 6 Alcohol-Sellers' Tax.** Businesses selling alcohol must pay special annual tax of \$250, up from \$54. (*Omnibus Budget Reconciliation Act of 1987*)
  - 5 FICA Tax on Tips.** Restaurateurs must pay FICA taxes on all employee tips, beginning January 1, 1988. (*Omnibus Budget Reconciliation Act of 1987*)
  - 4 Immigration.** Employers must fill out I-9 forms for all new employees. (*Immigration Reform and Control Act of 1986*)
  - 3 Section 89.** Employers must prove benefit plans do not discriminate in favor of highly-paid workers. Law repealed in 1989. (*Tax Reform Act of 1983*)
  - 2 Business Meal.** Tax deductibility drops to 30% beginning in 1987. (*Tax Reform Act of 1986*)
  - 1 Continued Health Benefits.** Employers of 20 or more must let former employees and beneficiaries continue buying into health plans for a limited time. (*Consolidated Omnibus Budget Reconciliation Act of 1985*)

# Regulations and Restaurants

## From A to Z

There's a lot more to running a restaurant than serving good food. People in the restaurant business face a ton of regulations, fees, and permit requirements governing everything from food safety to tip reporting. Here's a partial list of the federal, state and local rules covering restaurants. (In parentheses is the federal agency that enforces these rules.)

### FEDERAL

940 Form (Employer's Annual FUTA Tax Return) (IRS)  
 941 Form (Employer's Quarterly Federal Tax Return) (IRS)  
 Accessibility to disabled customers (DOJ)  
 Advance payment of Earned Income Credit (IRS)  
 Age discrimination (EEOC)  
 Alcohol excise taxes (IRS)  
 Annual occupational tax for alcohol-sellers (BATF)  
 Bloodborne pathogen program for employers who give first-aid (OSHA)  
 Citizenship-status discrimination (DOJ)  
 Carpools for employers in high-pollution areas (EPA)  
 Continued health benefits for former employees (IRS)  
 Cooking emissions in high-pollution areas (EPA)  
 Copyright law and restaurant music (DOJ)  
 EEO-1 Form (EEOC)  
 Egg-refrigeration standards (USDA)  
 Exempt managers (DOL)  
 Fair Labor Standards Act (DOL)  
 Family and Medical Leave Act (DOL)  
 Federal income taxes (IRS)  
 Federal income-tax withholding for employees (IRS)  
 FICA payroll taxes (IRS)  
 FICA payroll taxes on tips (IRS)  
 FUTA payroll taxes (IRS)  
 Gaming—cash transaction report (IRS)  
 Grease-trap waste disposal (EPA)  
 Hazard Communication Standard (OSHA)  
 Health claims and restaurant foods (FDA)  
 Health benefit plans and the Americans with Disabilities Act (EEOC)  
 I-9 Form (Employment Eligibility Verification Form) (INS)  
 Immigration Reform and Control Act of 1986 (INS)  
 Independent contractors, reporting of payments to (IRS)  
 Job application forms, permissible questions (EEOC)  
 Lockout/tagout requirements (OSHA)  
 Magnetic media reporting of Forms W-2, 8027 (IRS, SSA)  
 Material Safety Data Sheets (OSHA)  
 Meal credit (DOL)  
 Minimum wage (DOL)  
 National Labor Relations Act (NLRB)  
 National origin discrimination (EEOC)  
 Notice to employees of eligibility for Earned Income Credit (IRS)  
 Nutrient-content claims and restaurant foods (FDA)  
 Overtime pay rules (DOL)  
 Payroll-tax deposits (IRS)  
 Personal protective equipment (OSHA)  
 Polygraph ban (DOL)  
 Poster: Equal employment opportunity (EEOC)  
 Poster: Polygraph (DOL)  
 Poster: Minimum wage (DOL)  
 Poster: Family and medical leave (DOL)  
 Poster: OSHA (OSHA)  
 Race discrimination (EEOC)  
 Reasonable accommodation for workers with disabilities (EEOC)  
 Refrigeration equipment and CFC phase-out (EPA)  
 Religious discrimination (EEOC)  
 Restaurant closings, 60 days' advance notice (DOL)  
 SS-4 Form (Employer ID Number) (IRS)  
 Sex discrimination (EEOC)  
 Teen labor: Hours restrictions for workers under 16 (DOL)  
 Teen labor: Occupational restrictions for workers under 18 (DOL)  
 Tip credit (DOL)

Tip reporting and IRS Form 8027 (IRS)  
 Tip allocation (IRS)  
 Tip-income audits (IRS)  
 Tip pools (DOL)  
 Uniforms: Deposits, costs, maintenance (DOL)  
 Union contracts (NLRB)  
 Veterans' employment rights (DOL)  
 W-2 Form (Wage and Tax Statement) (IRS, SSA)  
 W-3 Form (Transmittal of Income and Tax Statements) (IRS)  
 W-4 Form (Employee's Withholding Allowance Certificate) (IRS)  
 W-5 Form (Earned Income Credit Advance Payment Certificate) (IRS)

### VIRGINIA

Alcoholic Beverage Tax  
 Business Licensing Fees  
 BPOL Tax/Gross Receipts Tax  
 Child Labor Laws  
 Child Labor Work Permits  
 Corporation Annual Report Fee  
 Corporation Excise Tax  
 Corporate Organization and Qualification Fees  
 Dairy Permit/Fee  
 Entertainment License Fees  
 Entertainment Tax  
 Fire Code Compliance  
 Happy Hour Law  
 Highway Signage Fees  
 Hour Restrictions for Employees under 16  
 Hour Restrictions for Employees 16 & 17 years old  
 Liability Laws  
 Litter Control Fee  
 Liquor License/Fees  
 Mandatory Rest Breaks  
 Minimum Wage Laws  
 Noise Compliance  
 Occupational Restrictions for Minors  
 Payment of Wage Laws  
 Personal Income Tax  
 Pollution Control Laws  
 Poster Requirements  
 Property Tax  
 Recordkeeping Requirements/Wage Reporting  
 Room Occupancy Tax  
 Sales and Use Tax  
 Sanitation/Food Preparation Regulations  
 State OSHA Requirements  
 Termination Payment Law  
 Unemployment Insurance  
 Unemployment Tax  
 Wage Deduction Laws  
 Wage Exemption Regulations  
 Waste Disposal Laws  
 Water Discharge Laws and Fees (local)  
 Workers' Compensation Insurance  
 Zoning (local)

FOR MORE INFORMATION contact the National Restaurant Association at (202) 331-5900 or the Virginia Hospitality and Travel Association at (804) 288-3065.



# 15 Reasons Restaurateurs Worry About More Government Regulation

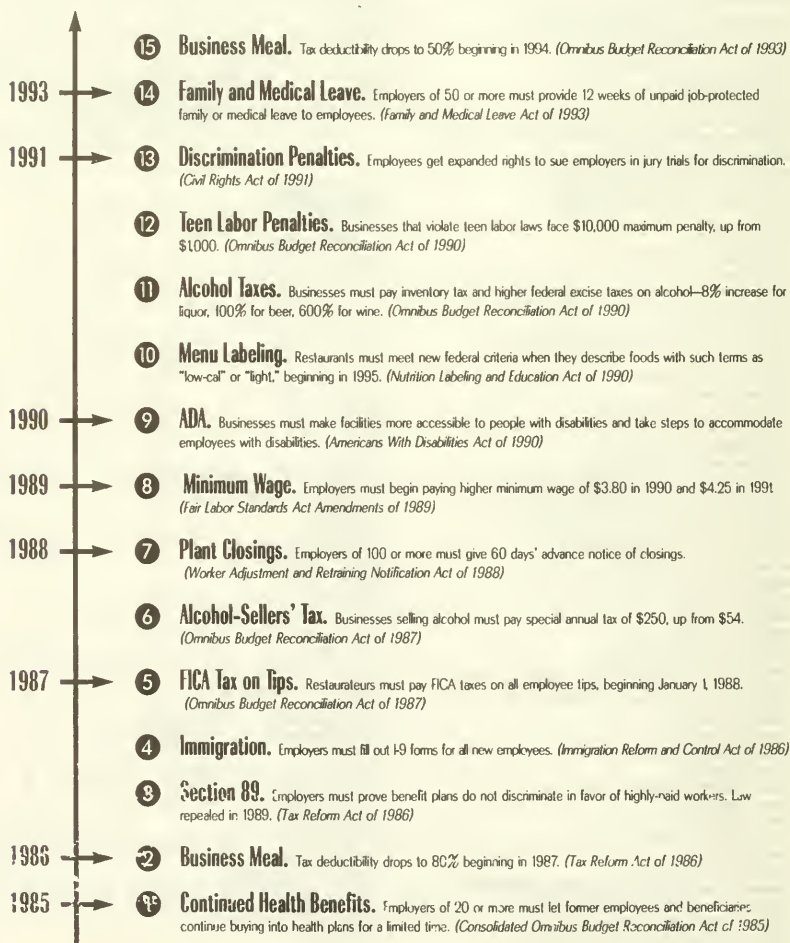
People who don't run a business are often surprised at the extent of the government's impact on business. Restaurateurs aren't. Laws and regulations have become a fact of daily life in the restaurant industry.

Foodservice operators who feel more bogged down than ever in government rules and government forms aren't just imagining it. Over the past ten years, restaurateurs have seen a tremendous increase in the number of federal regulations that affect restau-

rant. Following are 15 changes the U.S. Congress has made just since 1985.

Just becoming familiar with the laws is a daunting task. But consider the costs of compliance—in time and in money. And consider the liability if a business owner misses something. If it's not government audits or penalties, it's employee or customer lawsuits.

It's no wonder restaurateurs worry about more government regulation!



# Regulations and Restaurants

## From A to Z

There's a lot more to running a restaurant than serving good food. People in the restaurant business face a ton of regulations, fees, and permit requirements governing everything from food safety to tip reporting. Here's a partial list of the federal, state and local rules covering restaurants. (In parentheses is the federal agency that enforces these rules.)

## FEDERAL

940 Form (Employer's Annual FUTA Tax Return) (IRS)  
 941 Form (Employer's Quarterly Federal Tax Return) (IRS)  
 Accessibility to disabled customers (DOJ)  
 Advance payment of Earned Income Credit (IRS)  
 Age discrimination (EEOC)  
 Alcohol excise taxes (IRS)  
 Annual occupational tax for alcohol-sellers (BATF)  
 Bloodborne pathogen program for employees who give first-aid (OSHA)  
 Citizenship-status discrimination (DOJ)  
 Carpools for employers in high-pollution areas (EPA)  
 Continued health benefits for former employees (IRS)  
 Cooking emissions in high-pollution areas (EPA)  
 Copyright law and restaurant music (DOJ)  
 EEO-1 Form (EEOC)  
 Egg-refrigeration standards (USDA)  
 Exempt managers (DOL)  
 Fair Labor Standards Act (DOL)  
 Family and Medical Leave Act (DOL)  
 Federal income taxes (IRS)  
 Federal income-tax withholding for employees (IRS)  
 FICA payroll taxes (IRS)  
 FICA payroll taxes on tips (IRS)  
 FUTA payroll taxes (IRS)  
 Gaming—cash transaction report (IRS)  
 Grease-trap waste disposal (EPA)  
 Hazard Communication Standard (OSHA)  
 Health claims and restaurant foods (FDA)  
 Health benefit plans and the Americans with Disabilities Act (EEOC)  
 I-9 Form (Employment Eligibility Verification Form) (INS)  
 Immigration Reform and Control Act of 1986 (INS)  
 Independent contractors, reporting of payments to (IRS)  
 Job application forms, permissible questions (EEOC)  
 Lockout/tagout requirements (OSHA)  
 Magnetic media reporting of Forms W-2, 8027 (IRS, SSA)  
 Material Safety Data Sheets (OSHA)  
 Meal credit (DOL)  
 Minimum wage (DOL)  
 National Labor Relations Act (NLRB)  
 National origin discrimination (EEOC)  
 Notice to employees of eligibility for Earned Income Credit (IRS)  
 Nutrient-content claims and restaurant foods (FDA)  
 Overtime pay rules (DOL)  
 Payroll tax deposits (IRS)  
 Personal protective equipment (OSHA)  
 Polygraph ban (DOL)  
 Poster: Equal employment opportunity (EEOC)  
 Poster: Polygraph (DOL)  
 Poster: Minimum wage (DOL)  
 Poster: Family and medical leave (DOL)  
 Poster: OSHA (OSHA)  
 Race discrimination (EEOC)  
 Reasonable accommodation for workers with disabilities (EEOC)  
 Refrigeration equipment and CFC phase-out (EPA)  
 Religious discrimination (EEOC)  
 Restaurant closings, 60 days' advance notice (DOL)  
 SS-4 Form (Employer ID Number) (IRS)

Sex discrimination (EEOC)  
 Teen labor: Hours restrictions for workers under 16 (DOL)  
 Teen labor: Occupational restrictions for workers under 18 (DOL)  
 Tip credit (DOL)  
 Tip reporting and IRS Form 8027 (IRS)  
 Tip allocation (IRS)  
 Tip-income audits (IRS)  
 Tip pools (DOL)  
 Uniforms: Deposits, costs, maintenance (DOL)  
 Union contracts (NLRB)  
 Veterans' employment rights (DOL)  
 W-2 Form (Wage and Tax Statement) (IRS, SSA)  
 W-3 Form (Transmittal of Income and Tax Statements) (IRS)  
 W-4 Form (Employee's Withholding Allowance Certificate) (IRS)  
 W-5 Form (Earned Income Credit Advance Payment Certificate) (IRS)

## KANSAS

Alcoholic Beverage Tax  
 Child Labor Laws  
 Corporation Annual Report Fee  
 Corporate Organization and Qualification Fees  
 Dairy Permit/Fee  
 Entertainment License Fees (BMI and ASCAP)  
 Food Handlers Certification (local)  
 Fire Code Compliance (local)  
 Happy Hour Law  
 Hour Restrictions for Employees under 16  
 Hour Restrictions for Employees 16 & 17 years old  
 Liability Laws  
 Liquor License/Fees  
 Minimum Wage Laws  
 Personal Income Tax  
 Poster Requirements  
 Property Tax  
 Recordkeeping Requirements/Wage Reporting  
 Room Occupancy Tax  
 Sales and Use Tax  
 Sanitation/Food Preparation Regulations and Fees (local)  
 Termination Payment Law  
 Tip Credit Law  
 Unemployment Insurance  
 Unemployment Tax  
 Wage Deduction Laws  
 Workers' Compensation Insurance  
 Zoning (local)

FOR MORE INFORMATION contact the National Restaurant Association at (202) 331-5900 or the Kansas Restaurant and Hospitality Association at (316) 267-8383.

STATEMENT OF JOSEPH A. DEAR  
ASSISTANT SECRETARY OF LABOR  
FOR OCCUPATIONAL SAFETY AND HEALTH  
BEFORE THE  
SMALL BUSINESS COMMITTEE  
U.S. HOUSE OF REPRESENTATIVES

July 26, 1995

Chairwoman Meyers and Members of the Committee:

It's a pleasure to appear before this Committee again to discuss OSHA's initiatives to reinvent itself in order to protect workers at risk on the job more effectively and, at the same time, to reduce regulatory burdens on small businesses. In addition, I would like to discuss how OSHA is implementing the President's March 4 and April 21 directives on regulatory reinvention.

As I mentioned during my appearance last month before your Subcommittee on Regulation and Paperwork, there have been a lot of troubling stories circulating about OSHA. For instance, you may have heard allegations that OSHA has "banned the tooth fairy" by prohibiting dentists from giving children their extracted teeth to take home. I have testified previously that this story is a myth, but it continues to surface. Stories like this detract from the more important story of OSHA, employers and workers acting together to promote and ensure safe and healthy workplaces.

The plain truth is that OSHA saves lives. Since its creation in 1970, OSHA has performed an invaluable service to millions of America's working families. Through the agency's protective standards and enforcement, and efforts by thousands of



responsible employers, the rate of fatal occupational injuries has been cut in half. But our work is far from done. Despite this progress, every year, work-related accidents and illnesses still result in the loss of an estimated 56,000 lives. That's more than we lost in battle during the entire nine-year Vietnam war.

On an average day in our country, 17 workers are killed in workplace accidents, and an estimated 137 more die from occupational disease. Just imagine if one plane crashed every day, killing 150 people. The public would be outraged and demand action. But since these deaths normally occur one or two at a time, at different worksites around the country, most people just don't notice the problem.

Along with these alarming fatality statistics is the fact that another 16,000 workers are injured every day on the job, 6,000 seriously enough to lose time from work. In all, workplace injuries alone cost our economy over \$100 billion a year, with occupational illnesses costing additional billions as well. We all bear these staggering human and monetary costs--as employers, as workers, and as taxpayers.

As we examine the potential impact of our regulations on small firms, we cannot forget that a safe and healthful work environment is just as important for employees working in small firms as it is for those working in large firms. Workplace injuries, illnesses and deaths are not confined to certain

industrial sectors or to large firms. According to an OSHA analysis of data collected by BLS, businesses with fewer than eleven workers account for 33 percent of all fatalities even though they account for less than 20 percent of employees. So, while small businesses may seek exemptions from regulations, their employees unfortunately have no such exemption from workplace tragedies.

For example, on June 12 of this year, a 43-year old employee of Bay, Inc. in Fruita, Colorado was killed when the boom of a crane failed and fell on him. On June 13, a 26-year old employee of ESOCO Orrington, Inc. of Orrington, Maine was killed when he became tangled in a conveyor belt and was pulled through a 6 inch space between a roller and conveyor belt's frame. On June 15, a 66-year old laborer at Shared Resources, Inc. in David City, Nebraska was pinned between two pieces of grain-loading equipment and crushed to death. All of these employers were small, with fewer than 100 employees.

Since coming to OSHA in 1993, I have been working hard to reduce the number of work-related injuries, illnesses and deaths, and to get the most out of our limited resources. I recognize that in the past, OSHA has at times lost sight of its mission, focusing on numbers and rules instead of smart enforcement and results. I also know that proceeding with "business as usual" could well put us out of business altogether. But make no mistake: OSHA is changing the way it does business.

**PRESIDENTIAL REGULATORY REINVENTION INITIATIVE AND THE NEW OSHA**

On March 4, 1995, the President issued a regulatory reinvention directive requiring agencies to 1) cut obsolete regulations; 2) reward results, not red tape; 3) meet with those affected by their regulations; and 4) expand efforts to utilize consensual rulemaking. Following up on this directive, as announced by President Clinton, Vice President Gore and Secretary Reich on May 16, OSHA has begun regulatory reform initiatives to enhance safety, trim paperwork, and transform the agency.

The Administrator of OIRA, Sally Katzen, described one such initiative to you just last week - nationalizing our Maine 200 program. In this program, which was instituted in 1993, the 200 Maine companies with the highest number of workplace-related injuries were offered a choice: work in partnership with OSHA to improve safety, or face stepped-up enforcement. All but two firms chose partnership. The firms received assistance in developing safety and health programs, and in return were placed on a secondary list for inspections.

The results of the Maine program are extremely promising. In two years, the employers identified more than 95,000 hazards, and nearly six out of ten employers in the program have already reduced their injury and illness rates, even as inspections and fines have diminished significantly. Wisconsin has started a similar program targeting the 200 employers with the highest

incidence rate of injuries and illnesses based on workers' compensation data. OSHA plans to expand the most successful features of these programs nationwide -- features such as using work-site specific data to help identify high-hazard workplaces, offering employers a choice in how they work with OSHA, providing information to employers about effective safety and health programs, conducting efforts to find and fix hazards, ensuring management commitment and employee involvement, and modifying enforcement policies for high-performance employers.

Another OSHA initiative is the Focused Inspections in Construction policy, which started October 1, 1994. It allows OSHA to recognize the efforts of safety-conscious employers by conducting our inspections in a more streamlined manner, focusing on the four leading causes of construction fatalities: falls, struck by objects, crushing and electrocution.

#### PERFORMANCE MEASUREMENT

OSHA is changing from an organization driven by numbers of inspections to one driven by results, in keeping with the President's charge to reward reinvention, not red tape. Improving OSHA's performance measurement system is more than an important internal objective, it is also required by the Government Performance and Results Act (GPRA).

Many employers have complained that OSHA inspectors care less about worker safety than they do about meeting perceived



"quotas" for citations and penalties. While OSHA has never used quotas, it has in the past used citations and penalties as performance measures. I have put a stop to this practice. We will now measure our success as an agency by our success in making real safety and health improvements, such as identifying and abating hazards and reducing the number of injuries and illnesses in the workplace. As an example of how OSHA is focusing on results instead of red tape, OSHA no longer cites employers who have failed to put up the required OSHA poster, we simply give them a poster.

It is a common belief these days that small businesses hate OSHA. While it is true that some small businesses have had bad experiences, and that we are not satisfied that we have eliminated all legitimate small business concerns, the customer satisfaction survey conducted for OSHA tells a different story.

In response to Executive Order 12862, which directed all Federal agencies to survey their customers and develop customer service improvement plans, OSHA contracted with a private survey research group to survey a random sample of employers who had been inspected by Federal OSHA in FY 1993. 433 employers (60 percent of the 740 sampled) responded to this survey. Most employers agreed that their recent OSHA inspection had identified hazards that needed correction (67 percent), that management and employees were more aware of the importance of safety and health following the inspection (62 percent), and that their workplace was a safer place to work as a result of the inspection (59

percent). Seventy-six percent rated the OSHA compliance officer highly for professionalism.

Many employers have taken the trouble to write letters to OSHA to compliment inspectors' performance. Mr. Edward Prenot, President of Rockford Drop Forge Company, referring to a recently conducted inspection commented, "We appreciate the professional and competent manner in which this matter has been handled...." After an inspection of Glacier Vandervell, Inc., Mr. James Friedt wrote, "You really did reflect a 'New OSHA' in stating your interest in participating in the development of 'solutions' and then measuring the effectiveness of those solutions."

#### REVIEW OF REGULATIONS

Of course, many small employers have expressed concern regarding the volume and complexity of federal regulations. In response, the President directed federal agencies, including OSHA, to conduct a page-by-page review to identify outdated, duplicative or conflicting regulations. OSHA held meetings in May and June with stakeholders, including representatives of small business, to help identify regulations of concern. These discussions greatly assisted our regulatory review, which was sent to the President on June 15. The review contains several reinvention and reform initiatives, including revision of standards using plain language and evaluation of methods for

improving chemical hazard communication and the right-to-know in the workplace.

The Hazard Communication Standard (HAZCOM) was originally developed in 1983 to ensure that workers who may be exposed to toxic substances are provided useful information about the dangers of these substances and about protective measures needed to work with the substances safely. The standard, as intended, has resulted in a large increase in awareness among employers and employees about workplace hazard recognition and control. However, the standard has also received substantial criticism, including that Material Safety Data Sheets are too long and too technical, and that enforcement of the standard has focused too heavily on paperwork and minor violations, particularly with regard to relatively low hazard materials, such as common consumer products.

Some of these criticisms of the rule are exaggerated, focusing on a handful of horror stories rather than the thousands of workers who have been protected from hazardous substances as a result of the standard. Nevertheless, OSHA has asked the National Advisory Committee on Safety and Health to convene a working group to identify ways to improve hazard communication in the workplace. The working group will provide recommendations on how OSHA can simplify material safety data sheets, reduce the amount of paperwork, improve the effectiveness of worker training, and revise enforcement policies to focus on serious hazards. Meanwhile, I have reiterated agency policy with

unambiguous instructions to the field that they are not to cite employers when workplace chemical exposures are from the use of common household chemicals, such as bleach or dishwasher detergent, except in situations where these chemicals pose a substantial risk to employees.

#### SMALL BUSINESS EFFORTS

I would like to take a few minutes now to highlight some of the specific measures OSHA is taking to address the needs of small business. First, OSHA complies with the Regulatory Flexibility Act by conducting a regulatory flexibility analysis for every safety and health standard. Each analysis estimates the cost of compliance for small entities, including the cost of reporting, recordkeeping, and obtaining any professional skills needed to comply. If the analysis reveals that a rule will have a significant economic impact on a substantial number of small entities, OSHA considers regulatory alternatives that would serve to minimize this impact.

Several examples illustrate how some of our more recent rules meet the unique needs of small employers. First, OSHA's lead in construction standard (May 4, 1993) (29 CFR 1926.62) was designed so that the small home remodeling job would be treated differently from the large-scale lead abatement project. OSHA worked with the National Association of Homebuilders, which is made up predominantly of small businesses, to develop guidance



for the home remodeler on how to comply with the regulation. A second example concerns OSHA's rule for small grain elevators with storage capacities of less than one million bushels (29 CFR 1910.272). These small facilities are allowed to perform a daily visual inspection of grain dust accumulations instead of using physical monitoring equipment like motion detectors. And just recently, OSHA worked with the National Association of Home Builders to develop an alternative to requirements in our Trenching Standard regarding the application of waterproofing (tar) to the exterior basement walls of residential buildings.

Some of OSHA's outreach efforts are especially designed to ensure that small employers understand our rules and how to comply with them. A free consultation service is available to employers to help them identify potential hazards at their worksite, improve their safety management systems, and qualify for one-year exemptions from routine OSHA inspections. The program is targeted toward small businesses and is delivered by State governments using well-trained consultation staff. The consultation program is completely separate from the enforcement program, and participants cannot be cited during the consultation visit. All States offer consultation services. In the last five years, OSHA has helped over 100,000 small and medium sized businesses identify and correct over 800,000 hazards, free of charge, free of citations, and free of penalties.

Special efforts have also been made to ensure active participation in OSHA rulemaking by all interested stakeholders, including small employers. For example, in developing a possible chromium regulation, OSHA has had several meetings with associations representing the electroplating industry (which is dominated by small employers) and has conducted two of its eight site visits at small businesses that use chromium compounds. OSHA has also made a point of inviting a variety of organizations that represent small businesses or industries dominated by small businesses to its ergonomic stakeholder meetings as well as soliciting small business owners to attend a round-table discussion on possible ergonomic regulations.

OSHA has developed unique assistance tools to help employers comply with certain OSHA rules. For example, OSHA recently issued a standard to protect workers from exposure to cadmium, a substance that causes kidney disease and cancer. In direct response to requests from employers and medical professionals, OSHA, in cooperation with the Cadmium Council, developed an interactive software program to help employers analyze workers' medical lab test results. The software, nicknamed "GOCad", classifies employees based on these test results and also recommends corrective action to be taken by the employer. The software also provides the user the option of creating useful supporting documents, such as the required letter to affected workers and helpful checklists. This interactive

compliance tool is available free of charge and has been distributed by both OSHA and the Cadmium Council.

So far, more than 590 copies of this software have been downloaded from the Department of Labor's electronic bulletin board, more than 200 copies have been distributed in disk form to employers who asked for it in that form, and many other copies have been retrieved from various Internet sites. OSHA strongly encourages users to copy and share the program. A Department of Commerce report to Congress stated that the program is "...expected to save private firms hundreds of thousands of dollars in annual compliance and administrative costs and conceivably millions in liability and litigation costs."

The positive public response to GOCad led OSHA to pursue a similar tool for our Asbestos standard. The first draft of the ASBESTOS ADVISOR was reviewed by representatives of trade associations, specifically building owners and managers and unions, and their suggestions were incorporated into the test product before it was released for wider testing. This testing will be conducted jointly with the affected industries. OSHA has already received enthusiastic support from members of the business community and notable attention in the trade press about this software.

These ADVISOR systems meet several objectives that are well-known concerns of the business community, particularly the concerns of small firms. They clarify provisions of highly technical rules, provide necessary guidance, reduce paperwork and

research burdens, and most importantly, protect workers' lives and health.

Looking toward the 21st century, OSHA is actively exploring ways to use computer technology to provide assistance to employers. This includes placing the text of rules on the Department's electronic bulletin board and Internet sites; expanding the information available on our CD-ROM, which is the number one GPO sales item among all government-issued CD-ROMs; and, developing additional interactive compliance tools. OSHA is also proud that we have been working with the Small Business Administration from the inception of the idea for the U.S. Small Business Advisor (SB ADVISOR). This interactive computer assistance tool will give employers one-stop, Internet access to services and regulatory information.

The idea for the SB ADVISOR emerged from the March 1994 Small Business Forum on Regulatory Reform. The small business participants in the forum recommended that federal regulatory agencies create a "one-stop" point of contact and access for all of the regulatory information that a small firm would need to know in order to comply with regulatory and recordkeeping requirements. The SB ADVISOR was unveiled at this year's White House Conference on Small Business. Through the SB ADVISOR's Home Page, users will be able to search for regulations and receive compliance assistance. While the SB ADVISOR remains "under construction", OSHA continues to make useful compliance information available to small firms (as well as workers and the



general public) on its own Internet Home Page. In this interactive environment, employers can receive copies of standards, ask questions and receive timely responses, and find out about best work practices.

Finally, OSHA is working on some new Compliance Directives that would respond to small business needs without reducing worker protections. In response to an April 21 directive from the President, OSHA intends to revise its penalty policy that reduces penalties based on employer size. The revised policy will provide for larger reductions in proposed penalties for small employers. In addition, penalties will be eliminated for other-than-serious violations for small and medium sized employers if, during an inspection, OSHA does not find any willful, repeated, failure-to-abate, or high gravity serious violations.

Another new compliance directive would allow specific good faith reductions of 10 to 80 percent for employers with effective safety and health programs that find and fix hazards. The level of reductions would depend on the degree of completeness and effectiveness of the overall safety and health program at the worksite.

In conclusion, small business and OSHA need to work together. There are real hazards which result in injured workers

and death on the job every day. We need to be partners, not adversaries. I would be pleased to respond now to any questions you may have.

Good Afternoon, Mr. Chairman My name is Eamonn McGeady. I am president and part owner of Martin G. Imbach, Inc., a Marine and heavy construction company headquartered in Baltimore, Maryland. We employ approximately fifty people and have been in business for fifty-one years. We do work all up and down the Chesapeake Bay and its tributaries.

Because we are marine oriented we come under the direct jurisdiction of OSHA, as well as the jurisdiction of MOSH - the Maryland State Safety and Health administration. We have been told by our insurers and by the Maryland State people that we have one of the safest construction companies in the State.

I compliment President Clinton and Vice-President Gore for their efforts to reinvent OSHA and simplify the bewildering bureaucracy that currently confronts a small business person. I believe the "Maine 200" concept has a lot of promise; I also believe the ongoing efforts to simplify regulations and write understandable regulatory language should continue. I do not understand the Secretary of Labor's threats to recommend a veto of Congressman Ballenger's reform bill since it seems to address many of the problems highlighted by the Administration.

My review of the comparisons of the various OSHA reform bills (I must admit I have not read them cover to cover) reveals the Ballenger bill as having many provisions helpful to safety in the workplace and to the small business person. For example, the Ballenger bill promotes the concept of consultation instead of confrontation. In the past, OSHA inspectors have been more interested in documenting citations and producing revenue than helping with their expertise to improving workplace safety. This type of approach inevitably produces an "us-versus-them"

mentality in the typical small business person. By eliminating the fear of first time citations (for other than serious infractions) and providing an opportunity for the employer to correct a deficiency, the Ballenger bill encourages an inspection and discussion between an inspector and the employer or his employees, rather than both sides trying to determine how this matter is going to look for their lawyers. I also believe that the requirement that there be a risk assessment/cost benefit analysis for new (and I hope existing) regulations will benefit the agency, the employer and the employees.

I must point out however, that all is not well in River City. OSHA's current fall protection standards are causing a great amount of confusion in the field. We provide life vests for all of our personnel working near or over water. Should that person have an additional harness and line over water, one that may actually hinder him from recovering from a fall into the water? The requirements for the hazardous material communication standards is simply to the point where it receives lip service to meet the regulations, but is a little bit like freshman chemistry - the information passes from the notes of the Instructor to the notes of the student without affecting the minds of either. The proposed Indoor Air Quality Standards are going to be a nightmare for compliance and enforcement. And if I give the ergonomics standard to someone to read and tell them to comply, they won't be able to tell me what it says.

In summary, we need improvement in workplace safety. The most dangerous part of working is still driving to work. But if we in the small business community can make a partner instead of an adversary out of the OSHA representative, our employees, OSHA and we will be much farther along on the road to workplace health and safety.

Thank you.



**REMARKS BY CHARLIE NORWOOD****to the Small Business Committee****July 26, 1995**

Thank you Chairwoman Myers; distinguished Members of the Committee; Allow me first to say what a distinct honor it is for me to appear before you this afternoon. I applaud you for the work that you are doing in investigating the actions of OSHA and the impact OSHA has on small business.

I think it is very appropriate that you all here in the Small Business Committee are taking a long, hard look at OSHA. Of the many things OSHA does badly ... and there are many ...

one that bothers me more than anything else is that OSHA hurts small businesses who cannot adequately defend themselves.

Big businesses consider fighting OSHA a normal part of doing business. If you are a General Motors or a Goodyear or a US Steel, you can afford to hire a flock of lawyers to keep up with every little dictate that OSHA sends down from on high. But small businesses don't have the resources to fight when OSHA comes knocking on their door.

Over the past several weeks, we in the Workforce Protection Subcommittee of the Opportunities Committee have been hard at work reforming OSHA. Chairman Ballenger's bill

will go a long way toward correcting many of the excesses of OSHA. Many of these reforms will have a very specific impact on small businesses. OSHA will be required to issue a warning for an alleged violation and allow an employer a reasonable time to fix a violation before fining an employer. Currently, as you know, OSHA can come in unannounced, inspect, and issue a fine, without ever giving the employer a chance to correct the problem. The Ballenger bill will protect small businesses by requiring employees to work with employers to fix a perceived workplace problem before OSHA is called in.

It is my understanding that the Assistant Secretary for OSHA will be appearing before you later on today. We have had several hearings at which we have heard testimony from Assistant Secretary for OSHA Joe Dear among others. Mr. Dear has stated time and again that some 56,000 American

lives are lost each year due work-related accidents and illnesses. Now I don't agree with Mr. Dear's numbers. In fact, the professionals at the Department of Labor don't either. But that's another story. The important thing to understand in all this is that even if Mr. Dear and the anti-employer crowd are correct, then all that they are demonstrating is that OSHA as it currently exists has not helped us achieve safe workplaces. We need to change OSHA from an adversarial agency that employers try to hide from, to one that comes alongside employers to create safer workplaces.

Workplace deaths and injuries are tragic events. For the past 25 years I earned my living as a dentist and nurseryman. As an employer, I was very interested in providing the safest workplace possible for myself and my co-workers. However, I understand that I cannot legislate a perfect, accident free



world. We cannot legislate absolute safety. We all would if we could. Indeed, past Congress's have tried. But, it has not worked - as Mr. Dear and so many of our Democrat colleagues tell us with their death figures. Their many anecdotal stories of tragic deaths and injuries at the workplace provide the evidence of our failure to legislate and bureaucratically mandate workplace safety. So as responsible, compassionate legislators we have a duty to find better ways - more effective ways to further workplace safety. That is why I and the other members of the Workforce Protection Subcommittee have worked so hard to develop good, sound, reasonable legislation to bring OSHA alongside employers.

Interestingly enough, even the Clinton Administration has come around to agree that OSHA must be changed. In taking steps to create a new OSHA, the Administration has announced that it will be guided by three principles: 1) more

cooperation between OSHA and employers; 2) the application of "old-fashioned common sense"; and 3) results - not red tape. This a good start. I would suggest that this committee look very closely at OSHA to insure that the administration's actions match its rhetoric.

To sum up, Madam Chairwoman, it is time for a new approach to workplace health and safety. We need to depart from the present "command-and-control" regulatory scheme. If we must have an OSHA, then we must change it from a police agency looking to hit small businesses with punitive fines into a center for workplace safety designed to assist companies in achieving safer workplaces.

Good afternoon Madam Chairwoman and members of the committee. My name is Rick Palmer and I am a painting contractor from Amarillo Texas. I am a member of the Painting and Decorating Contractors of America Government Affairs Committee as well as the Government Relations Committee of the American Subcontractors Association. From 1988-1992 I was on the OSHA Advisory Committee for Construction Safety and Health and I have been involved in the issue of OSHA reform for some years having testified before the old Education and Labor Committee several times regarding previous pieces of legislation. PDCA is also a member of the Associated Specialty Contractors, an umbrella organization comprised of associations representing specialty construction contractors.<sup>1</sup>

I want to express my appreciation to you for calling this hearing and understanding that issues like OSHA reform have significant impacts on the small business sector. This committee is correct in expanding its scope to explore issues like OSHA and other regulatory areas that play a large role in how small businesses operate.

Let me begin my discussing some themes for reform of OSHA which I believe are reflected in Mr. Ballenger's bill, H.R. 1834. I will then discuss in more detail the sections of the bill that address these areas. First, OSHA standards and regulations should be based on common sense and sound scientific judgement. The reasoning behind safety regulations should never be a mystery to both employers and employees. Like all other factors affecting businesses, OSHA's regulations should meet some threshold of justification that indicates a sufficient benefit to society for the burden imposed by the regulations.

Secondly, the relationship between the agency and the regulated community must be based on the pursuit of a mutual interest rather than on fear and intimidation. In many ways the

---

<sup>1</sup> In addition to PDCA, ASC is comprised of: the Mason Contractors Association of America, the Mechanical Contractors Association of America, the Sheet Metal and Air Conditioning Contractors National Association, the National Insulation and Abatement Contractors, the National Roofing Contractors Association, the National Electrical Contractors Association, and the National Association of Plumbing, Heating, Cooling Contractors.

workplace has improved since the original act was passed in 1970, particularly in the emphasis on working safely. Employers are now interested in doing the "right thing" and are looking for assistance that is affordable, reliable and effective. There is a large void in this area that the federal government is uniquely positioned to fill. We should be striving for a three-way partnership involving the agency, employers and employees rather than an adversarial relationship with all three parties attacking each other. OSHA should be the source to which employers turn to improve their workplaces rather than the agency they dread almost as much as the IRS.

Finally, employers need some assurance that if they play by the rules, they will be protected and their efforts will be recognized. For an employer to meet all the requirements of a regulation and still be given a citation because an employee independently violates some provision undermines the employer's efforts and reduces the incentive to be in compliance. An employer who meets all of his obligations should be protected from a citation solely related to an employee's actions. Employers who have not met their obligations should continue to be held accountable.

While none of these themes are exclusively small business issues, they all take on greater meaning and have a higher impact within the small business context. Safety and the protection of workers is a universal issue, but the resources necessary to remain in compliance with OSHA's regulations or to consistently do what's required represent a greater burden on small businesses than large ones. Furthermore, in construction, legitimate contractors are constantly competing against other operators that disregard safety and health allowing them to submit lower bids. With the construction industry dominated by small firms, the burdens represented by compliance with OSHA regulations may be the difference in being competitive or not being awarded a contract. Legitimate contractors should not have to face that choice. Much of Mr. Ballenger's bill would seek to reduce this burden while enhancing the level of safety in the workplace.

Now I would like to describe specifically how we believe the Ballenger bill will yield a more responsive and effective OSHA.



### Reasonableness of Regulations

H.R. 1834 would impose many of the regulatory reforms that have been debated as part of the "Contract with America" directly on the OSHA rulemaking process. While OSHA currently must offer some analysis of its proposals, the cost/benefit analyses, risk assessments, and regulatory impact analyses required under Section 2 of H.R. 1834 are much more specific and make clear what factors and issues the agency must examine. Under the current analyses performed pursuant to Executive Order 12866<sup>2</sup> and the Regulatory Flexibility Act<sup>3</sup>, OSHA routinely underestimates the impact and cost of their regulations by several orders of magnitude. The analyses are so inaccurate as to be insulting to the readers in the industries being discussed.

As an example, in a proposed revision to the respirator standard, published in November 1994, OSHA relied on data generated about the manufacturing sector to determine the cost and impact of the proposal on the nonmanufacturing sector and the construction industry. Thus, an industry as large and distinct as construction, did not warrant specific examination as to the impact a regulation involving respirators, which are widely used in construction, would have.

In its "Reinventing OSHA" report, the administration has talked about developing "common sense" regulations. Unfortunately, the effort seems to have focussed on cosmetic approaches rather than substantive solutions. For example, the agency recently proposed splitting up the volume of regulations affecting the construction industry so that employers would have to consult two volumes instead of one merely to save a few pages of printing. This was characterized as reducing the pages of regulation applicable to the construction industry, although not a single substantive regulation was altered. When this was discussed at a meeting with representatives of management and labor present, participants from both sides of the table immediately objected and told OSHA that they wanted this kept the way it is.

---

<sup>2</sup> This requires a regulatory impact analysis for any rule having an annual effect on the economy of \$100 million or more.

<sup>3</sup> The RFA requires a determination of whether there is a significant economic impact on substantial number of small entities.

The administration has also talked about changing the "culture" of the agency and offered as an example eliminating the emphasis on numbers of inspections and measuring performance by the amount of citations issued. We believe a more fundamental cultural change is needed. Within the agency, the employer community must be taken seriously when it offers to work with OSHA. The high profile effort on ergonomics is one example. While the agency did a good job going out to solicit input, as draft proposals were circulated for comment, it was clear that much of what the employer community and specifically the construction industry said was ignored.

The "culture" of the agency has not been receptive to the concerns of the employer community and particularly the construction industry. Repeatedly, regulations are promulgated without an accurate model of the construction industry to estimate the impact or cost. Issues like the predominance of small firms, employee turnover rates of three to six times a year, multiemployer worksites, and multiple worksites are almost never taken into account in estimating how construction employers will comply with regulations.

The provisions of H.R. 1834 requiring changes in OSHA's rulemaking would go a long way to bringing accountability to the process and allowing outside forces to bring pressure on the agency when it ignores its obligations. As your committee knows, the only leverage available is judicial review of agency actions initiated by outside groups. Your committee's support was instrumental in advancing this reform of the Regulatory Flexibility Act and we support the inclusion of similar provisions in H.R. 1834.

#### **Relationship between OSHA and the Regulated Community**

The current relationship between OSHA and the employers that are covered by it is based on the agency wielding a "big stick". The logic is that employers will fear the impact of an inspection and citation or penalty and they will be inspired to comply with the regulations. This is similar to the fear of getting a speeding ticket when driving down the highway. Just as many drivers calculate the risk they are going to get caught and continue to drive at speeds above the limit, so many employers (and particularly some in the small business arena) calculate the chances

that they are going to be inspected and proceed without adequate safety programs. There will never be enough troopers to catch every speeder, and OSHA will never have enough inspectors to catch every violation or safety risk.

Clearly, many employers, like many drivers, pursue appropriate safety measures because they realize the inherent value in this approach. Far more employers are far more safety conscious now than at the time the original act was passed. It is simply not practical or effective to operate an unsafe workplace, particularly in construction, in today's economy. The workers' compensation mechanism alone has forced many employers to implement safety measures and programs, but there is still a huge need for reliable, affordable advice and information on how to operate a business safely.

We support Congressman Ballenger's approach towards using the "carrot" rather than the "big stick". H.R. 1834 is the first piece of legislation we have ever seen that attempts to make the agency a friend and ally in the pursuit of safety rather than just a heavy handed enforcer. By focussing on abatement of hazards in the inspection process, rather than punishing employers, the "new" OSHA could become an effective agent for change and improved safety. This bill, however, does nothing to reduce the agency's ability to bring enforcement actions where they are needed, and we recognize that they will still be needed.

If this bill was enacted, the emphasis on abatement would also eliminate a current problem in the construction industry between prime contractors and subcontractors. Specialty contractors often encounter prime contractors that require agreements passing along all OSHA fines to the subcontractors. The "hold harmless clause" thus transfers the risk from the prime contractor to the subcontractor, and as a result, subcontractors pay the fines of the prime contractors who have been indemnified from any responsibility. This is contrary to the principle that every party should be responsible for their own actions. By providing a warning and requiring abatement before a citation, this bill would reduce the need for prime contractors to use hold harmless clauses.

There should be no better place to turn for advice on how to comply with a regulation than the folks that wrote it. Conversely, by being involved in assisting with compliance, the agency is likely to learn valuable insights in how to make a more workable regulation. Currently, OSHA promulgates their regulations and then leaves it up to private sector groups like PDCA, ASA and other associations to figure out how to comply and provide the necessary assistance. Safety in the workplace should be the goal of a three way partnership between OSHA, employers, and employees. Section 4 of H.R. 1834 would change OSHA's mission to assist employers more through consultation rather than merely coming down on employers when they have failed. One example of where this approach has been used to some success is the IRS' toll free information service many taxpayers use during tax season to get help in filing their returns. Surely, if the federal government can help private citizens pay their taxes, it should be able to help businesses protect their employees and save lives.

Another area that needs much improvement, but alas is not mentioned in this bill, is OSHA's efforts at outreach and communication. It is no exaggeration to say that OSHA's approach to publicizing a new rule is to publish it in the Federal Register or make it available on-line and expect outside groups and the media to pick it up and disseminate it.

We believe OSHA should immediately initiate a mainstream, high profile campaign to promote safety in the workplace and the use of employers and contractors who emphasize safety in their businesses. These employers need protection and deserve support so that they can remain competitive and send the message that safety pays. This issue is just as important as other areas where high profile campaigns have been used to influence people's choices such as convincing young people not to smoke, advocating safe sexual practices, and promoting the armed services as a career.

#### **The Role of Employee Responsibility**

There is no question that the employer bears the responsibility for providing adequate training, equipment, and instilling the necessary emphasis in his employees about safety. The sad



truth though, is that sometimes that is not enough and the best efforts of the most conscientious employer may be undermined by an employee that ignores the rules.

For example, under the current system, if an employee decides not to be bothered by a lifeline on a scaffold, the employer is cited for the violation regardless of the fact that the employer provided the equipment, trained on how to use it, and stressed the importance of using it correctly. Under that situation, H.R. 1834 provides that the employer would not be issued a citation. The emphasis is therefore placed on fixing the problem as it should be, rather than assessing the blame. It is important to note that Section 7 would not impose a citation on the employee found to be the cause of the violation, it merely prevents the employer from being unfairly cited.

We believe, this approach will also serve as an attractive incentive to some employers to implement comprehensive safety programs. Letting the employer know that his efforts will be recognized, and taken into account would be an excellent way to inspire compliance. We support this approach and believe this is long overdue.

Another area in which we have sought improvement for a long time is federal guidance in administering drug and alcohol testing to employees. The construction industry is particularly vulnerable to the effects of abuse in this area because of the nature of our jobs. This bill makes it very clear what options an employer has and clarifies the situations when testing can be administered. We support Section 16's provisions on drug and alcohol testing as bringing uniformity and clarity to this issue.

## **Conclusion**

Madam Chairwoman, we in the employer community and especially the small business community have been looking for a bill like this for a long time. We have endured various attempts to change the agency in ways we believed would make it less efficient, undermine the cause of safety in the workplace, and make it more difficult for small companies to have an

effective safety program. Much has been said about the business community's support for this legislation. The truth is, H.R. 1834 is attractive to responsible, conscientious employers because it helps them do the right thing by giving them assistance in protecting their employees. At the same time, this bill still preserves the agency's enforcement abilities necessary to give the regulations impact in situations where employers have not fulfilled their obligations.

The administration has said that they support some of the concepts and goals of Mr. Ballenger's bill, but would like to pursue these changes administratively rather than through legislation. We welcome the administration's participation in this effort and hope that a true partnership will emerge, but we believe that legislation is still necessary to codify these changes so that they will survive future changes in administrations and not be subject to fluctuations based on who lives in the White House.

As I have noted, there are improvements that can and should be made to this legislation. We know others have some as well. We hope your committee will support these changes and that the final bill will reflect these efforts to make it a stronger measure. We believe this is an excellent starting point for creating a more effective, efficient, and responsive OSHA than we currently have and building the agency we desperately need.

I will be happy to respond to any questions you may have.



(201) 938-0435

FAX: (201) 938-0437

748 GOTHAM PARKWAY  
CARLSTADT, N.J. 07072

28 July 1995

The Hon. Jan Meyers  
House of Representatives  
2361 Rayburn House Office Building  
Washington, DC 20515-6315

Dear Congresswoman Meyers:

I appreciate the privilege of testifying before your committee on 26 July.

Had I known beforehand that there were subjects to be covered beyond consultation, I would have prepared my remarks somewhat differently. I gather, from some of the remarks made by the committee members, that there is a strong sentiment for curtailing, if not emasculating, OSHA.

Like many people with my length of time in industry, I have a collection of "horror stories", several of which I shared with Mr. Dear at a break in the hearings. Nevertheless, I believe that OSHA must be retained and supported in its basic mission, which is the protection of the health and safety of people in the workplace.

I believe that this mission has two components. The first has to be informing employers of necessary actions to ensure safe and healthful working conditions. This is the function of consultation. As you know, I have had very positive experiences with the NJ Department of Labor Consultation Service, which is funded by OSHA. I have personally introduced at least six companies to this service. Obviously, this has enhanced the operational safety and health programs in these companies without the need for punitive actions. It is my experience that, once they are convinced that consultation does not result in punitive actions and concomitant fines, employers do take advantage of the service. The problem lies in assuring and in convincing employers that this is the case.

The second component must be enforcement. Without enforcement, OSHA is nothing more than a paper tiger. While I believe that most employers want to do "the right thing", there will be those who try to evade the law. Although I believe most people are honest, I still would not like to see the police forces dissolved.

This is not to say that no major changes are necessary, although I am not sure which should be legislated and which should be administrative. The mountain of paperwork required must be reduced. The "one size fits all" mentality must be changed. By way of example, Mr. Coratolo testified as to problems with the Hazard Communication Standard in his restaurant. Having been raised in the restaurant/bakery business, I can empathize strongly with him. On the other hand, in my industry, I consider Hazcom a common sense requirement. So much so, that I developed such a program in the mid 1970's, well before OSHA's, which would have basically satisfied them today - other than the paperwork requirements. On the other hand, Process Safety Management may be important in the chemical manufacturing industry, but is only an expensive waste of time and effort in mine.

Another area which should be addressed is enforcement inspections and penalties for companies which undertake voluntary audits with one of the OSHA funded services such as NJDOL. It makes sense to me, from two aspects, that companies which have undertaken such audits and complied with the directives should be shielded from penalties, if not from routine enforcement inspections altogether. First of all, this would encourage wider use of consultation, and second, it permits OSHA to target unaudited sites, which would almost certainly yield a greater quantity of, as well as more serious, violations. Obviously, there has to be a limit to the shield interval. I would think that one to two years is appropriate. It does seem reasonable to me that OSHA might want to conduct a sampling of general inspections in order to audit the quality of designated consultations. This is a case where a compliant company should be shielded from penalties, although any violations discovered should be remediated.

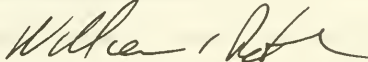
Mr. Dear stated that OSHA was changing some of its ways of doing business with respect to minor paperwork violations. I commend him on this and believe that this approach should be formally extended to other types of violations which are not directly dangerous to life and limb, with a grace period in which to correct them without penalty.



I cannot emphasize enough the necessity of maintaining OSHA as a functioning entity in need of modification and of increasing the awareness of employers and employees alike through the use of services such as the NJ Department of Labor's consultation unit.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'William I. Roth', written in a cursive style.

William I. Roth  
Director of Regulatory Affairs

cc: Mr. Joseph Dear, USDOL/OSHA

STATEMENT  
on  
OCCUPATIONAL SAFETY AND HEALTH  
before the  
HOUSE COMMITTEE ON SMALL BUSINESS  
for the  
U.S. CHAMBER OF COMMERCE  
by  
William A. Stone

July 26, 1995

Good morning. My name is William A. Stone. I am President of Louisville Plate Glass Company in Louisville, Kentucky. We are the majority stockholder in two Atlanta glass manufacturing firms, Tempered Glass, Inc. and Insulating Glass of Georgia, for which I am the Chief Executive Officer. Louisville Plate Glass is a member of the U.S. Chamber of Commerce Federation of more than 215,000 businesses, 3,000 local and state chambers of commerce, 1,200 trade and professional associations, and 72 American Chambers of Commerce abroad. I am a member and former Chairman of the Chamber's Labor Relations Committee. I also served on the Chamber's Small Business Council and the Chamber's Board of Directors for five years.

The companies we manage manufacture architectural glass products primarily for commercial buildings and employ about 116 people in three locations. I purchased the Louisville Plate Glass Company 25 years ago. We had only 19 employees at the time.

As a result of my activities in the Louisville business community and my experience with the Chamber, I have developed a slightly different definition of "small business" and I would like to suggest that, in many respects, it is the most meaningful description of what we really are. To me, the hallmark of a small business is one in which the person or persons who operate or control the organization are personally at risk as the majority owners. The

point is that the owner or owners have risked their own money on the success or failure of the firm.

In this definition of small business, the "small" refers to the number of owners, not primarily the firm's revenue, profits, or number of employees. Almost all businesses fitting my definition – indeed, most businesses in this country – have small payrolls and limited administrative and management staffs. This common factor leads to a central theme of my remarks, and one of the primary concerns of the business community when discussing OSHA or considering OSHA reform proposals. There are critical differences between large companies with hundreds or thousands of employees, many of whom are specialists or experts in various areas such as safety, security, finance, accounting, legal matters, and human resources management, and small, privately owned businesses. Most small businesses have limited management and administrative staffs, as in the case of our company, where just four individuals work on such matters, and none of them have the resources or time to focus on which government regulations may be applicable in any given situation.

### **I. OSHA Regulations – Mountain Climbing**

It is apparent that OSHA's regulations, because of their number and complexity, are written by out-of-touch bureaucrats who have absolutely no real-world workplace experience. Surely, those thousands and thousands of pages of OSHA regulations were written for experts in the field of occupational health and safety. The writers of those regulations could not possibly have thought that any owner/operator or manager of a small business would have the time or resources to review these regulations and ensure compliance. The mountain of

virtually incomprehensible mandates for which small businesses are held accountable surely does not consider the time and resource limits of these businesses. Given this dilemma, how can anyone not understand the enormous reservoir of ill will toward OSHA on the part of small businesses in every industry and region of the country?

Small businesses want to have safe and healthful workplaces; they want to comply with the law and regulations. However, most small businesses, due to their limited staff and resources, cannot devote precious time and effort to assimilating the rapidly growing body of federal and state regulations that may apply. I could devote a significant portion of my time to reading and trying to understand OSHA's many regulations. Assuming I could figure out what they all required of an employer, I could then take steps to make sure our company was in complete compliance. If I devoted the necessary time and effort to OSHA regulations, I would have little or no time to manage the business. Without my oversight, our company would soon be unable to continue.

Small businesses cannot call in a specialist or consultant every time OSHA regulations change or new standards are issued. Similarly, a company's attorney cannot be consulted on a routine basis or the fees will soon pose a serious threat to the company's competitiveness, or even its survival.

When considering OSHA and OSHA reform legislation, I hope Congress will remember that the effect of the federal occupational safety law and its regulations on small businesses is vastly different from the impact that reform will have on large businesses and major corporations. Where another regulatory requirement may seem appropriate and reasonable for a large multi-site corporation with hundreds or thousands of employees,



including several internal OSHA compliance experts, its impact on a one-owner, one-site operation may be disastrous. One size does not fit all.

My plea for regulatory flexibility is not just about relieving the burdens of the small business person; it is also about the economic viability of this country. Small Business Administration statistics show the small business community as the primary job creators of today and tomorrow. Furthermore, the past two decades have been marked by technological advances that can be credited to small business "pioneers." This trend will undoubtedly continue in the future. Excessive regulation only serves to stifle the potential of small business.

There are simply too many laws and regulations with which every company must comply. A small business cannot even hope to keep track of them all, let alone ensure compliance. Large personnel departments with specialists devoted to compliance with federal regulations are even hard-pressed to ensure compliance in every circumstance they encounter. How can Louisville Plate Glass Co., with only four people (including myself) working on personnel and compliance with federal (as well as state and local) mandates governing the employment relationship hope to ensure total compliance? It can't.

## **II. I'm Not a Lawyer**

Being in business nowadays means one must have ready access to a library of constantly changing statutes and regulations, and be able to effectively use those resources. To do this, the modern American business owner should be a lawyer. However, like most entrepreneurs, I'm not a lawyer.

Louisville Plate Glass tries to comply with all federal and state laws and regulations. If we are unaware of an applicable mandate or requirement, we must, like most small business managers, rely on common sense and a basic concept of fairness. On occasion, we will consult our company attorney, but the cost of simply consulting on a complex or novel issue is very high and such consultations must be limited.

Sadly, most small businesses face the same difficulties as does Louisville Plate Glass. Unfortunately, even common sense and a willingness to do the right thing, or what appears to be the right thing, are not enough.

### III. Working Safely Together

Safety is a major concern at Louisville Plate Glass and the other companies I manage. It is our priority to pay close attention to worker safety at all times. We are an organization that values plant safety. Our management will not compromise an individual's health and welfare just to get a job accomplished. Any time we spot a safety problem in our company, or any time that a safety problem is brought to our attention by an employee or supervisor, immediate steps are taken to correct the situation.

Despite these efforts, we were experiencing exceptionally high workers' compensation costs and claims. At one time our premiums were 75% above the average for our industry. We could not reduce our claims and resulting workers' comp premiums despite our serious approach to plant safety. We simply had to do something for reasons of both basic human decency and the economic drain on the company.

We finally sat down with our employees to learn from them what we could do to

solve the problem. We explained that it would mean a great deal to the company economically if this problem could be corrected. The employees suggested that if they were successful in eliminating most accidents and claims, they should anticipate sharing some of the economic benefits of such an improvement.

We got the message! Today our company gives a cash award to every employee who remains injury-free for 6 months. In addition to the cash awards, we make giving out the awards a large public event with the recipients coming to a special podium in the plant to receive our congratulations along with the award. We hope that those who do not receive an award will feel the peer pressure and want to be part of the action in the future.

The result of the program is that four years after its inception, our experience rating is 15% below average in our industry. Given all the other increased costs of doing business, this was a valuable effort with tangible results.

#### IV. Double Trouble

Every non-government employer in this country that I know of is subject to at least one state workers' compensation law. Because of the way workers' comp insurance is provided, one could argue that OSHA and the 1970 OSH Act are redundant. Let me use Louisville Plate Glass as an example. I believe that our company's situation in this regard is similar to that of virtually every other small business in this country.

The company that provides our workers' comp policy insists on completing annual wall-to-wall inspections of our workplaces. The inspections are extremely thorough and comprehensive. Following the inspection, the insurance company gives us a written report

describing the problems or hazards it uncovered, if any, and asking that those items be corrected. Subsequently, the insurance company verifies that the corrections were completed.

This process gives Louisville Plate Glass a regular and thorough inspection by a concerned outside party. The benefits are obvious, for the company and, most importantly, for our employees. Our workers' comp insurance rates are far below the industry average. One additional positive feature of the insurance company inspections – **it is at absolutely no cost to taxpayers!!** The federal budget is not affected at all. OSHA is spared the need to inspect our facilities. In these circumstances, one must ask whether OSHA is redundant in many respects. It's clearly a case of plant safety double-dipping.

#### V. Cooperation in the Workplace

Without a doubt, cooperation in the workplace is widely viewed as the best way to improve productivity, enhance employee involvement and interest, and achieve the highest quality in goods and services. Some say that employee involvement is the key to better workplace safety and health. Judging from the experience of Louisville Plate Glass, one would have to agree. We see the trend toward greater employee involvement and implementation of the employee participation objectives of Total Quality Management as irreversible and ultimately beneficial to everyone in an organization. Few dispute that an atmosphere in which workers and managers cooperate to achieve the goals of the organization will, in most cases, lead to a more productive, satisfied, committed, and reliable work force and will produce improvements to the company's bottom line. Even the federal government is moving in this direction. Unfortunately, some in organized labor have decided to continue



to fight efforts to improve workplace cooperation. That is why Congress should pass the TEAM Act as soon as possible.

While workplace cooperation may be the answer to many individual and institutional problems, it simply does not work when it is less than voluntary by all parties involved. Mandated cooperation, as provided in some of the OSHA reform proposals considered by Congress last year, simply would not work. This is especially true when the cooperation is thoroughly prescribed in minute detail as it was in some of last year's OSHA reform legislation. A one-size-fits-all mandate, like those in the Comprehensive Occupational Safety and Health Reform Act, will create intense employer resentment and extremely reluctant involvement. On the other hand, a voluntary approach facilitated by employer incentives, where necessary, will allow the parties to develop their own cooperation plan. Their ownership of that plan will improve the chances that it will last and lead to the desired result — improved workplace health and safety.

#### VI. Defensive Private Enterprise

Businesses also are continually threatened by employees who may think they have a cause for action that will ultimately yield large sums in punitive and compensatory damages. Employees are deluged by the incessant television commercials and omnipresent print advertisements by lawyers, which can easily become the seeds of destructive lawsuits.

It is often reported that the costs of medical care skyrocketed in part because of doctors practicing defensive medicine. How much time, effort, and money is spent by small business practicing defensive private enterprise — employers fearful of litigation costs arising

from any or all personnel actions? What are the lost opportunity costs? This situation has been fueled by past activist Congresses that politically could no longer afford to add significantly to the public's tax burden in return for increased statutory rights and more elaborate government services. So instead of further burdening the fed-up public, Congress transferred the cost of expanded social services and broadened individual rights to American employers. Had this trend continued, it could have permanently disabled America's ability to compete and maintain jobs.

Thus, it was with great interest that I read in Rep. Ballenger's OSHA reform bill (H.R. 1834) the section that provides that an employee should alert his employer about a health or safety problem before calling in OSHA for an inspection. This provision should be included in many federal labor and employment laws. It will give employers the opportunity to correct problems before the formal litigation process and its unnecessary costs get underway.

## VII. Conclusion

The key to the future of human resources management, worker-management relations, and improved conditions for American workers may be that over-used and somewhat ill-defined term -- empowerment. The federal laws and regulations governing the workplace should empower entrepreneurs, growing businesses, and employees so that the evolution of business and the institution of work can continue to allow us to compete freely with each other and with our foreign competitors. As President Clinton has stated, the jobs engine of our economy is small business. Small businesses should not be buried with incomprehensible

mandates and regulations requiring the assistance of technical staffs and lawyers to ensure compliance.

We are in the midst of another industrial revolution. Flexibility will be the hallmark of the successful business organizations of the next century. Most businesses — large or small — and the people who make them successful must have the ability to be creative and flexible. They must be able to adjust rapidly to changing processes, dynamic markets, and new opportunities. The best way to create good jobs, achieve adaptability, and maintain flexibility is through individual and organizational empowerment.

Business must be rewarding — not frustrating. A reasonably competent business owner or manager should not have to mold business plans in the shadow of threatening and ruinous litigation. Defensive business, like defensive medicine, wastes time and money, benefits few, and builds resentment and frustration. Most importantly, it discourages the creation of new and better business organizations and squelches investment in businesses large and small.

Finally, I would like to mention the recently concluded White House Conference on Small Business. I am very familiar with the Conference. Although I did not directly participate this year, I was quite active in the first two conferences (1980 and 1986) and chaired the Kentucky delegation. Consequently, I have a pretty good understanding of what Conferences like this can do.

It is important to note that the 2,000 small business delegates from all over the country adopted two recommendations (out of sixty) to reform the regulatory process to ensure that agencies operate under a presumption of innocence rather than a presumption of

guilt. One of the two resolutions specifically was directed toward OSHA and called for a working relationship between OSHA and small business that would be supportive rather than adversarial. Perhaps changes to OSHA could include an office within the Department of Labor devoted to the unique small business issues that appear too-often overlooked by OSHA and the other agencies and functions within the Department of Labor.

Thank you for the privilege of allowing me to speak on behalf of the U.S. Chamber of Commerce. I would be happy to answer any questions.



# CHARACTERISTICS OF BLOOD-CONTAINING AEROSOLS GENERATED BY COMMON POWERED DENTAL INSTRUMENTS

Robert L. Miller

764 Grayson Road, Pleasant Hill, CA 94523

Powered dental instruments applied to whole blood in a typodont field of operation generated aerosols of red blood cell and hemoglobin-tinged plasma at rates ranging from 0.003 to 2.2  $\mu\text{L}$  of plasma per minute with particle sizes ranging from 0.06 to 13  $\mu\text{m}$  and half-lives of 35 minutes to 17 hours. Particles 0.06 to 0.38  $\mu\text{m}$  were plasma spheroids that contained no detectable hemoglobin or red blood cell fragments. Particles 0.66 to 13  $\mu\text{m}$  were mostly plasma spheroids, only a small fraction of which contained whole and fragmented red blood cells. All the recovered particles physically could contain the 0.042  $\mu\text{m}$  hepatitis B virus, could be inhaled, and 20 to 100% of them could be retained in the human respiratory system. Of 0.06 to 2.5  $\mu\text{m}$  plasma aerosol particles, 15–83% passed through the filter media of nine makes of surgical masks used by dentists for protection from occupational infection. These findings lend support to the hypothesis of an airborne route for the hepatitis B infections reported for dental professionals.

An early clue that occupational viral hepatitis may be contracted by the airborne route was reported in 1950 for plasma workers who developed viral hepatitis after inhaling powdered plasma harvested from infected blood donors.<sup>(1)</sup> Decades later, reports of up to 37% of dental professionals having been infected by hepatitis B virus (HBV) appeared in the literature,<sup>(2)</sup> but no routes of transmission were proven for the infections.<sup>(3–5)</sup> While Gonzalez and Nalway were able to correlate glove use and a reduced incidence of HBV infection in general dentists,<sup>(2)</sup> Reingold et al. reported universal precautions, the wearing of latex gloves, surgical masks and eyeshields, to have failed to provide substantial protection from HBV infection for 112 of 434 (26%) oral surgeons.<sup>(6)</sup> This failure of universal precautions also may have been consistent with dental professionals not wearing surgical masks or wearing surgical masks reported to have inefficient filtration medium for the period of 1969 to 1989.<sup>(9,10)</sup> Specifically, in 1969 various surgical mask media worn by dentists were reported to pass 1 to 86% of 0.5 to 7.5  $\mu\text{m}$  colony forming units of aerosolized oral bacteria,<sup>(9)</sup> and in 1989 various surgical mask media were reported to pass 2 to 87% of aerosolized oral bacteria.<sup>(10)</sup>

In the mid 1970s an airborne route for HBV infection in dentists was hypothesized, and area air-samples were taken near 21 HBV antigenemic patients undergoing dental treatment.<sup>(11)</sup>

Neither hemoglobin nor HIV surface antigen were recovered from the air. Using the values for the hemoglobin content of whole blood and the sensitivity of their hemoglobin and HIV surface antigen assay systems, the investigators concluded that any aerosols present would have had to contain less than  $1 \times 10^{-6}$  mL of whole blood per liter of air. Twelve years later both hemoglobin<sup>(12,16)</sup> and human immunodeficiency virus (HIV)<sup>(17)</sup> were recovered from aerosols generated from blood by an orthopedic surgeon's powered instruments.

The current study was conducted *in vitro*, in isolation, by the author using his own blood to avoid the potential infection hazard associated with the deliberate aerosolization of human blood that may contain pathogens. The study was undertaken to determine rates of production, particle size distribution, persistence, and blood content of aerosols generated by powered dental instrument forces, and the filtration efficiency of nine makes of surgical masks worn by dentists primarily for prevention of occupational infection. Such finite data would be fundamental to support a hypothesis for an airborne route of occupational infection by HIV in dental professionals.<sup>(12–21)</sup>

## METHODS

Aerosols generated in the mouths of dental patients were simulated in the laboratory by applying powered dental instruments for one minute to 1.0 mL of whole blood. The whole blood was injected and welled up from the bottom of an artificial gingival sulcus, 2 mm wide  $\times$  3 mm long  $\times$  4 mm deep, cut next to a typodont mounted tooth (Figure 1). This simulated the blooded-fields-of-operation caused by gingival bleeding during a cavity preparation. Preparation of red blood cells (RBCs), white blood cells (WBCs) and plasma also were aerosolized and studied.

The blood used had been drawn from the author by standard hospital venipuncture, stored at 4°C, maintained clot free by ethylene diamine tetra-acetate, and used within seven days of the draw.

The aerosols were generated and contained at ambient pressure inside one of two 1-m<sup>3</sup> cubic stirred-settling aerosol chambers that were constructed as described by Dimmick<sup>(18)</sup> and illustrated in Figure 2. Stirred-settling maintained homogeneous aerosols for precise sample taking, e.g., aerosol samples taken at 27 sample points within the sister chamber were found to be within 5% of each other.<sup>(19)</sup>



FIGURE 1. Typodont jig fitted with air-turbine handpiece and syringe for aerosolizing blood rising from an artificial sulcus

Aerosol temperature and relative humidity (RH) were measured by an electronic thermometer-hygrometer having a sensitivity of 0.1°C and 1.0% RH (63-844, Tandy Corp., Fort Worth, Tex.).

Aerosols were generated from whole blood and its separated elements by the following powered dental instruments previously reported to aerosolize oral bacteria when used in the mouths of dental patients:<sup>(8,11)</sup>

- (1) The three functions of a generic dental syringe (no manufacturer's mark), air-stream at 10 L/min, water-stream at 50 mL/min, air-water spray at combined streams;
- (2) The air-turbine handpiece (Pedodontic handpiece, Union Broach, New York, N.Y.) driving a 557 bur with air-water spray of 50 mL/min water-stream,<sup>(12)</sup> 10 L/min air-stream, and a 30 L/min discharge of turbine drive-air at the turbine head; and
- (3) The air-driven, slow speed handpiece (Starfile Titus, Star Dental, Lancaster, Penn.) driving a Robinson Bristic Disc (a 16-mm diameter brush made by Buffalo Dental Co., Syosset, N.Y.).

The 10 to 40 L of powered dental instrument air used to generate aerosols within the chamber represented only 1 to 4% of the chamber volume discharged from the chamber through a HEPA filter cartridge mounted in the chamber wall to preserve ambient pressure in the chamber. The 1-m<sup>3</sup> chamber was selected because its volume was large enough to diminish the effect of air being added or taken away during aerosol generation and sampling.

Aerosol samples were drawn from the chamber through a 0.63-cm bore sample port or through 6.3-cm diameter portions of clamp-sealed surgical mask filter media and swatches of cloth samples. The total sample volume taken from an aerosol, 10 samples in 6 hours, was noninvasively less than 1% of the total aerosol volume that was replaced by clean air drawn into the

chamber through the chamber wall HEPA filter cartridge. This loss of aerosol volume was not factored into the determination of aerosol persistence because its effect on half-life values was considered to be negligible, e.g., a 2-hour half-life would have been extended by only 36 seconds.

Aerosol persistence, expressed as half-life, was the time elapsed for an aerosol to have lost 50% of its mass of particulates.

Aerosol samples were collected by a quartz crystal microbalance cascade impactor, QCMCI (QCM Cascade Impactor, Model IC2H Aerosol Analyzer, California Measurements, Inc., Sierra Madre, Calif.) operated at a rate of 2 L/min.<sup>(13,14)</sup> The QCMCI measured real-time particle mass concentration for each of 10 impaction stages with a sensitivity of 20 ng/m<sup>3</sup>. The mass median diameters (MMD) for impacted blood-element particles were calculated by applying the densities of dried plasma (1.3 g/cm<sup>3</sup>) and RBCs (1.2 g/cm<sup>3</sup>) to QCMCI factory calibration values for each of the 10 impaction stages. The densities were determined by a simple isopropanol displacement of plasma and RBC masses that had been dried and stabilized at ambient (25%) RH. The mass median diameters for particles impacted in the 10 QCMCI impaction stages derived for plasma particles are recorded on the abscissae of the bar graphs in Figure 3.

The rates for plasma aerosolized from whole blood by the powered dental instruments were reconstructed from the rates of dried plasma particle recovery measured by the QCMCI and the water lost by the aerosol particles:

$$Rf = \frac{Rd \times Df}{d}$$

Where:

Rf = rate fluid plasma aerosolized, uL/min

Rd = rate dried plasma recovered, mg/min

Df = drying factor for plasma, 12.5

d = density of dried plasma, mg/uL

The drying factor for plasma, 12.5, was found by weighing a 50-ml, aliquot of plasma before and after drying it to a friable state at ambient (30%) RH.

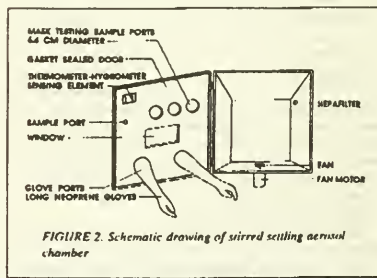


FIGURE 2. Schematic drawing of stirred settling aerosol chamber

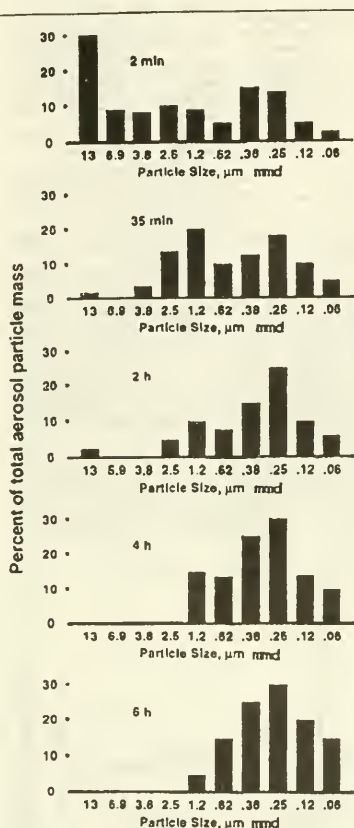


FIGURE 3. Size distributions of plasma particles in an aerosol at 28°C, 25% RH, and at ages 2.0 min, 35 min, and 2.0, 4.0 and 6 hours.

For an examination of the particles impacted from whole-blood aerosols and separated blood-element aerosols, samples were taken after cover slips had been substituted for the 10 opaque quartz crystal impaction plates. While the inserted cover slips disabled the microbalance function of the QCMCI for that

individual sample, they permitted examination of impacted particles by light microscope to determine their size, shape, and presence of blood cells.

The presence of hemoglobin in masses of aerosol particles impacted in each QCMCI stage was detected by hydrating the impacted particle masses in 5  $\mu\text{L}$  of water and applying urinalysis test strips to them (Hemastix, Miles, Inc. Elkhart, Ind.). The Hemastix had a manufacturer's stated sensitivity to hemoglobin of 0.015 to 0.062 mg/dL, about equal to the hemoglobin contained in 5 to 20 normochromic RBCs.

The efficiency of a surgical mask filter medium was expressed as the percent of plasma particles removed from aerosols by the medium:

$$\text{Percent filter efficiency} = \frac{(C_b - C_a)}{C_b} \times 100$$

Where:

$C_a$  = Concentration of aerosol particles after mask.

$C_b$  = Concentration of aerosol particles before mask.

No effort was made to monitor or standardize the pressure drop across the clamp-sealed surgical mask filter media when aerosol samples were taken by the QCMCI.

Interfering particles of aerosolized oil were eliminated by mounting the stirred-settling fan motor outside the chamber and running the dental handpieces without lubrication. The use of nearly particle-free water (White Rock Spring Water, Palomar, Calif.) held water-borne particulate contaminants in the aerosols below a background air-quality level of 50 ng/m<sup>3</sup>.

## RESULTS

Powered dental instruments generated RBC- and hemoglobin-tinged plasma aerosols from whole blood at rates ranging from 0.003 to 2.2  $\mu\text{L}/\text{min}$  (Table I). These aerosols generated by 10 L/min dental syringe air-streams and air-water sprays had initial concentrations ranging from  $2.0 \times 10^{-3}$  to  $2.2 \times 10^{-4}$  mL of RBC- and hemoglobin-tinged plasma per liter of air, and would be roughly equivalent to uncontrolled aerosols leaving a patient's mouth and subject to dilution by operatory air in the operating dentist's breathing zone. The remaining 997.8  $\mu\text{L}$  of the 1.0 mL aliquots of whole blood subjected to these instrument forces was driven into ballistic splatter particles (nominally >100  $\mu\text{m}$  in size,<sup>(21)</sup> bloody splashes, and bloodied pools of dental instrument supplied water.

The mass median diameters of aerosols generated from whole blood by dental syringe air-water sprays ranged from 1.2  $\mu\text{m MMD}$  at aerosol age 1 min to 0.12  $\mu\text{m MMD}$  at 6 hours, and the mass median diameters for air-turbine air-water sprays ranged from 0.38  $\mu\text{m MMD}$  at aerosol age 1 min to 0.12  $\mu\text{m MMD}$  at 6 hours. The MMD for aerosols generated by the Robinson brush ranged from 6.9  $\mu\text{m MMD}$  at 1 min to 0.38  $\mu\text{m MMD}$  at 6 hours. Air-streams and air-water sprays consistently generated aerosols of smaller particle size than did the mechanical action of the Robinson Brush (Table I).

TABLE I. Rates of Aerosol Production and Mass Median Diameters

Instrument Function	Number of Tests	Rate of Aerosol Generation $\mu\text{L}$ of Blood per Minute		Mass Median Diameter, $\mu\text{m}$ at 1.0 min/ 6.0 hr	
		Range	Mean		
Dental syringe					
Air-stream	4	0.2 to 1.3	0.7	0.38	0.12
Water-stream	4	0.003 to 0.04 <sup>a</sup>	0.02	no data	
A/W spray	11	1.2 to 2.2	1.7	1.2	0.12
Air turbine handpiece					
557 bur, A/W spray	4	0.20 to 0.90	0.40	0.38	0.12
Slow speed handpiece					
Robinson brush	8	0.13 to 0.52	0.29	6.9	0.38

<sup>a</sup> Only the first samples taken of four aerosols were within the limits of the QCMCI sampler.

The powered dental instruments essentially stripped plasma from whole blood to form the aerosols. The lower than expected hemoglobin content of impacted "whole-blood aerosol" particles was first detected when pale-pink and buff-colored rather than deep-red masses of aerosolized blood were found on the QCMCI impactor plates.

When the impacted particles were examined by light microscope, the larger aerosol particles (0.6 to 13  $\mu\text{m}$  MMD) were found to be mostly plasma spheroids with only a small fraction of the particles comprised of whole or fragmented RBCs. No fragments of RBCs were seen in the smaller particles (0.06 to 0.38  $\mu\text{m}$  MMD). The pale pink impacted masses of larger particles (0.62 to 13  $\mu\text{m}$  MMD) tested positive for hemoglobin content; the buff-colored impacted masses (0.06 to 0.38  $\mu\text{m}$  MMD) tested negative for hemoglobin content.

When preparations of packed RBCs containing just enough plasma to wet the RBCs were aerosolized, 75 to 86% of aerosolized whole and fragmented RBCs were impacted as deep red masses on the first two stages of the QCMCI (7.3 and 13  $\mu\text{m}$  MMD). This was consistent with the color of packed RBC preparations and the size of clumped and single RBCs. The hemoglobin content of aerosols generated from the RBC preparations was skewed by the smaller plasma particles (0.06 to 0.25  $\mu\text{m}$  MMD) that had been aerosolized from the small amount of plasma used to keep the packed RBCs wet. Their impacted sample masses contained no detectable RBC fragments or hemoglobin.

When the aerosol production for 2.0 mL of the separated blood elements, plasma (mean of five aerosols), RBCs (mean of five aerosols), and 1.0 mL WBCs (one aerosol) were compared (plotted on the ordinate of Figure 4) the aerosolization of RBCs and hemoglobin-tinged plasma was found to be about 18-fold greater than that found for RBCs, and perhaps 50-fold greater than that found for WBCs. The WBC aerosol findings were limited to two aerosols, one for production and one for microscopic examination, because it would have required about one-half the author's total blood volume to harvest sufficient WBCs to generate six aerosols. The plasma and RBC aerosol findings coupled with the paucity of RBCs and fragments of RBCs recovered from "whole-blood" aerosols reinforced the observation that whole blood had been "stripped" of plasma by the aerosolizing forces of powered dental instruments. The composition of aerosols

generated from whole blood in this study never reflected the relative volumes of plasma (55%) and RBCs (45%) found for normocytic whole blood. This very likely was a function of the air streams, water streams, and combined sprays, which are not used by medical surgeons.<sup>14</sup> In those instances where hemoglobin is contained in the aerosol particles generated from whole blood, hemoglobin can be an excellent marker for determining blood content.

Most of the QCMCI-impacted RBCs and WBCs examined by light microscope were found to be intact cells that had resisted disruption by dental instrument forces, hypotonic instrument water, and impaction in the QCMCI. The recovered RBCs were distributed as whole cells in rouleaux formation clumps, as normal appearing disc-shaped single cells, as crimped or folded single discs, and occasionally as pie-shaped fragments. Recovered WBCs were intact cells, shaped like blunted ovals with fine longitudinal folds wrinkling their surfaces.

Aerosol persistence, expressed as half-lives for the 1-m "fall" in the stirred-settling aerosol chamber, was about 6 min for aerosols generated from RBCs alone, and about 35 min for the early fall-out of RBCs and large plasma particles from whole-blood aerosols. Overall, the half-lives varied from 2 to 17 hours

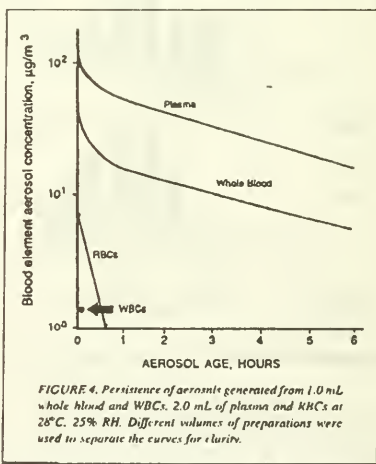


FIGURE 4. Persistence of aerosols generated from 1.0 mL whole blood and WBCs. 2.0 mL of plasma and RBCs at 28°C, 25% RH. Different volumes of preparations were used to separate the curves for clarity.



(Figures 3, 4, and 5). The shifts in the distribution of particle sizes of a typical plasma aerosol as it aged are illustrated by the bar graphs in Figure 3.

The filter media of nine different makes of surgical masks and swatches of two cloth samples were found to filter out 17 in 85% of 0.06 to 2.5  $\mu$ m MMD plasma particles (Table II).

### DISCUSSION

The recoveries of blood-clotment aerosols generated from 2.2  $\mu$ L or smaller volumes from the 1.0 mL aliquots of whole blood subjected to the action of powered dental instruments were made possible by the capacity of the QCMCI to capture and measure nanogram to microgram quantities of submicron-sized plasma particles. The RBC-tinged plasma content of aerosols generated by the 10 L/min air-water sprays and mechanical actions of powered dental instruments reported here ( $2.0 \times 10^{-4}$  to  $2.2 \times 10^{-4}$  mL plasma/L of air) were nominally 20 to 220 times greater than the previous investigator's  $1 \times 10^{-4}$  mL of whole blood per liter of aerosol low limit of detection.<sup>(11)</sup> The dilution of aerosols leaving the patient's mouth into 20 to 30 thousands of liters of air in a dental operatory, and the reliance on hemoglobin content as a consistent marker for blood aerosolized by powered dental instruments may have thwarted an earlier recovery of dental blood-aerosols.<sup>(11)</sup>

The bulk of the 1 mL aliquots of whole-blood driven airborne by powered dental instruments formed visible splatters and splashes of blood on the stirred settling chamber walls and floor. Splatters and splashes are ballistic; they remain airborne for only a second or two before they strike whatever is in their flight path.<sup>(12)</sup> The bulk of any pathogens contained in blood being aerosolized, splattered, and splashed by powered dental instruments is most likely to be distributed in the splatters and splashes.

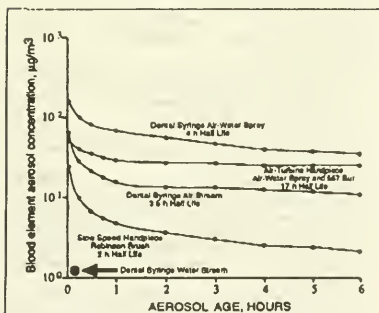


FIGURE 5. Persistence of aerosols generated from whole blood by five functions of powered dental instruments at 28°C, 25% RH (each curve the mean of 4 to 11 curves).

TABLE II. Filter Efficiency of Surgical Mask Media and Fabrics

Surgical Mask	Tests Done	Percent Particles Removed (Filter Efficiency)	
		Mean	Standard Deviation
Fluid-Guard <sup>a</sup>	21	85	2.1
Technol <sup>a</sup>	18	83	2.2
Anago <sup>a</sup>	20	76	5.4
Boundary FM10 <sup>a</sup>	15	76	3.8
Fabric Gown <sup>c</sup>	3	58	1.4
Fabric Knit <sup>b</sup>	4	45	3.9
B 817 A <sup>c</sup>	16	32	14.8
Aseptex 1942 <sup>d</sup>	17	32	3.4
Protect <sup>d</sup>	12	31	4.9
Asaplex 1800 <sup>d</sup>	16	23	4.9
Centre <sup>a</sup>	16	17	6.4

<sup>a</sup> Heathco, Boston, MA

<sup>b</sup> Patterson, Fort Worth, TX

<sup>c</sup> PPC, Hattiesburg, MS

<sup>d</sup> K-Mart, Troy, MI

<sup>e</sup> Kent, Astoria, PA

<sup>f</sup> JM, St. Paul, MN

<sup>g</sup> Unidisco, Troy, MI

The significance of these seemingly minuscule RBC-tinged plasma aerosols generated by powered dental instruments lies in their potential to remain airborne, to ride air-currents throughout their 35-min to 17-hour half-lives, and to carry plasma-borne HBV and perhaps other blood-borne pathogens.<sup>(13)</sup> from an infected dental patient into the respiratory system of anyone exposed to the aerosols.

If the blood used in this study had contained HBV, the plasma particles aerosolized by the powered dental instruments and collected by the QCMCI, 0.06  $\mu$ m MMD and larger, physically could have contained the 0.042  $\mu$ m HBV in any size fraction. The entire particle size distribution (0.06 to 13  $\mu$ m MMD) found for these aerosols could be inhaled and, depending on their particle size, 20 to 100% of the inhaled particles could be retained in the human respiratory system.<sup>(12)</sup>

A crude estimate of a possible HBV content for a typical plasma aerosol reported here can be made by multiplying the reported numbers of HBV chimpanzee infectious units (HBV CIU) found in human HBV patient serum,  $1 \times 10^5$  HBV CIU/mL,<sup>(13)</sup> by the mean rate of plasma aerosolized by a 1-min dental syringe air-water spray,  $1.7 \times 10^{-3}$  mL/min, Table I):

Since each HBV CIU must contain one or more complete HBV, this hypothetical HBV aerosol could be generated at a hypothetical rate of 170 000 or more HBV per minute. Because nothing is known about the infectivity of inhaled HBV, it is impossible to assign a finite risk factor to inhaling any part of such an HBV aerosol. However, when compared to the known one inhaled tubercle bacillus infecting dose found for nurses working tuberculosis wards<sup>(14)</sup> and those few known inhaled infecting doses found for human experiment volunteers (10 *tubercle bacilli*,<sup>(15)</sup> 10 *Q fever rickettsia*,<sup>(16)</sup> and 1300 *anthrax bacilli*,<sup>(17)</sup>) inhaling a part of an aerosol containing 170 000 HBV

CIU would appear to be imprudent for chimpanzees and perhaps no less so for human beings.

The passage of 1 to 87% of 0.3 to 7.5  $\mu\text{m}$  particles<sup>(10)</sup> and 15 to 83% of 0.06 to 2.5  $\mu\text{m}$  MMD plasma particles through the filter media of surgical masks worn by dentists for prevention of occupational infection and for infection control (Table II) provides a likely mechanism for part of the reported failure of gloves, surgical masks, and eyeshields to have protected oral surgeons from occupational HBV infection.<sup>(15)</sup> The low filter efficiencies of surgical mask media worn by dentists for prevention of occupational infection and infection control appear even more significant when two randomly selected fabrics, an operating gown material and a T-shirt sleeve, were found to be more efficient filters of plasma aerosol particles than were the filter media of 5 of the 9 different surgical masks tested (Table II).

The use of surgical masks for prevention of occupational infection appears to be poorly founded. Surgical masks were designed to prevent the oral, nasal, and respiratory tract flora of the surgeon from dropping into the patient's open field of surgery. The production of aerosols by breathing and speaking had median rates of 1 to 3 colony-forming units per minute (cfu/min).<sup>(16)</sup> That was three to four orders of magnitude fewer than the median rates of 1000 to 37 000 cfu/min rates of generation of bacterial aerosols<sup>(17)</sup> and five orders of magnitude less than the hypothetical 170 000 HBV/min rate of generation of plasma aerosols by powered dental instruments. This disparity between the numbers of microbes exhaled by dental professionals and the potential numbers of microbes subject to inhalation by those dental professionals would appear to mandate the selection of respirators with the most efficient filtration media available to be consistent with Songer's second rule of reason applied to risk management: "best available practice; highest practicable protection, and lowest practicable exposure."<sup>(18)</sup>

Songer's second rule is also applicable to the use of known engineering controls to retard plasma aerosol production and distribution. The prudent dentist will avoid application of powered dental instruments to bloodied fields-of-operation, will use the rubber dam to isolate the teeth being operated from blood and other body fluids, and will use high-volume surgical suction to hinder aerosols from leaving the patient's mouth during treatment. These and other engineering controls have been demonstrated to prevent bacterial aerosols generated by powered dental instruments from spreading to all rooms of the dental suite and dosing people in those rooms with airborne bacteria.<sup>(6,17)</sup>

### CONCLUSIONS

The plasma aerosols generated by powered dental instruments from whole blood provide the aerosol mechanics needed to support the hypothesis for an airborne route of HBV infection in dental professionals. The passage of 15 to 83% of aerosolized plasma particles through nine different masks of surgical masks used for infection control provides a mechanism for part of the reported failure of universal precautions masks to provide significant protection for oral surgeons from occupational HBV infection. The continued use of inefficient surgical masks for protection from occupational infection appears to be ill-founded and antithetical to the barrier concept.

### ACKNOWLEDGMENTS

The author wishes to thank Dr. Don L. Jewett, Department of Orthopaedic Research, University of California, San Francisco, Calif. for the use of the QCMCI that made this recovery of plasma aerosols possible; and Dr. Henry Snell and the laboratory crew at Hlavasu Samaritan Hospital, Lake Havasu City, Ariz., for their generous help and many venipunctures.

### REFERENCES

1. Kuh, C. and W.E. Ward: Occupational viral hepatitis: an apparent hazard for medical personnel. *J. Am. Med. Assoc.* 143:631 (1950).
2. Slew, C., S.R. Grunloger, E.W. Mitchell, and K.H. Durrell: Survey of hepatitis B exposure and vaccination in volunteer dentists. *J. Am. Dent. Assoc.* 114:457-459 (1987).
3. Feldman, R.E. and E.R. Schiff: Hepatitis in dental professionals. *J. Am. Med. Assoc.* 232:1228-1230 (1975).
4. Mowley, J.W., V.M. Edwards, G. Casey, A.G. Redeker, and E. White: Hepatitis B infection in dentists. *N. Eng. J. Med.* 293:729-735 (1975).
5. Smith, J.L., J.E. Maynard, K.R. Berquist, J.O. Doto, H.M. Webster, and M.J. Shelby: Comparative risk of hepatitis B among physicians and dentists. *J. Infect. Dis.* 133:705-706 (1976).
6. Weil, R.B., D.O. Lyman, R.J. Jackson, and A.B. Bernstein: A hepatitis serosurvey of New York dentists. *N.Y. State Dent. J.* 43:587-590 (1977).
7. Gonzalez, E. and C. Nalway: Assessment of the effectiveness of glove use as a barrier technique in the dental operating. *J. Am. Dent. Assoc.* 117:467-469 (1988).
8. Kelagold, A.L., M.A. Kane, and A.W. Hightower: Failure of gloves and other protective devices to prevent transmission of hepatitis B to oral surgeons. *J. Am. Med. Assoc.* 259:2558-2560 (1988).
9. Micik, R.E., R.L. Miller, M.A. Masarella, G. Ryge: Studies on dental aerobiology: I. Bacterial aerosols generated during dental procedures. *J. Dent. Res.* 48:49-56 (1969).
10. Clinical Research Association: Pacemakers, dental, clinical. *CKA Newsletter* 13:1-3 (1989).
11. Petersen, N.J., W.W. Bond, and M.S. Favero: Air sampling for hepatitis B surface antigen in a dental operating. *J. Am. Dent. Assoc.* 99:465-467 (1979).
12. Helouolu, P., D.L. Jewett, J. Balcer, C.H. Bennett, P. Selpel, and A. Rosen: Aerosols created by some surgical power tools: particle size distribution and qualitative hemoglobin content. *Appl. Occ. Hyg.* 6:773-776 (1991).
13. Johnson, G.K. and W.S. Robinson: Human immunodeficiency virus-1 (HIV-1) in the vapors of surgical power instruments. *J. Med. Virology* 33:47-50 (1991).
14. Jewett, D.L., P. Helouolu, C. Bennett, A. Rosen, and C. Neully: Blood-containing aerosols generated by surgical techniques: a possible infectious hazard. *Am. Ind. Hyg. Assoc. J.* 53:228-231 (1992).
15. Dimmick, R.L.: Stirred-settling aerosols and stirred-settling aerosol chambers. In *An Introduction to Experimental Aerobiology*, R.L. Dimmick and A.B. Akers, eds. New York: Wiley-Interscience, 1969, pp. 127-163.
16. Helouolu, P.A. and C.P. Koehland: Evaluation of a stirred settling chamber for the study of low-risk bioaerosols. Paper presented at the American Association for Aerosol Research. Annual Meeting in San Francisco, CA, 1992, p. 135.
17. Miller, R.L., W.E. Burton, and R.W. Spore: Aerosols produced by dental instrumentation. In *Proceedings, The First International*

- Symposium on Aerobiology*, R. Dimmick, ed. Berkeley, CA: University of California, 1963. 1963. pp. 97-120.
18. Gilmore, H.W.: Instrumentation. In *Textbook of Operative Dentistry*. St. Louis, MO: The C.V. Mosby Co., 1967. p. 136.
  19. Hering, S.V.: Calibration of the QCM impactor for stratospheric sampling. *J. Am. Assoc. Aerosol Res.* 7:257-274 (1987).
  20. Baron, P.: Modern real-time aerosol samplers. *Appl. Ind. Hyg.* 3:97-103 (1988).
  21. Miller, R.L., R.E. Mick, C. Abel, and G. Ryge: Studies on dental aerobiology: II. Microbial splatter discharged from the oral cavity of dental patients. *J. Dent. Res.* 50:621-625 (1971).
  22. Hinds, W.C.: *Properties, Behaviors, and Measurement of Airborne Particles*. New York: John Wiley and Sons, 1982. pp. 216-221.
  23. Shikata, T., T. Karasawa, K. Abe, T. Uzawa, H. Suzuki, M. Oda, M. Enai, M. Mayumi, and Y. Morisugu: Hepatitis Bc antigen and infectivity of hepatitis B virus. *J. Inf. Dis.* 136:571-567 (1977).
  24. Riley, R.L. and P. O'Grady: *Airborne Infection: Transmission and Control*. New York: The Macmillan Co. 1961. p. 92.
  25. Groschel, D.H.M., K.G. Dwork, R.P. Weozel, and L.W. Schellbel: Laboratory accidents with infectious agents. In *Laboratory Safety: Principles and Practices*. B.M. Miller, ed. Washington, D.C.: American Society for Microbiology, 1988. p. 262.
  26. Songer, J.R.: Management and codification of risks in the laboratory. In *Laboratory Safety: Principles and Practices*. B.M. Miller, ed. Washington, D.C.: American Society for Microbiology, 1988. p. 121.

U.S. Department of Labor

Assistant Secretary for  
Occupational Safety and Health  
Washington, D.C. 20210

AUG 22 1966

The Honorable Jan Meyers  
Chairwoman  
House Small Business Committee  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairwoman Meyers:

I appreciated the opportunity to appear before your Committee last month to present information on the Occupational Safety and Health Administration's (OSHA) efforts to reduce regulatory burdens on small firms. As we discussed both during the hearing and in our conversations afterward, OSHA is committed to increasing protections for workers, while decreasing red tape and paperwork. The new initiatives that I described on July 26 are designed to make real improvements in worker safety and health, without imposing unfair burdens on employers.

I am enclosing several documents that further clarify some issues that were raised during the hearing. These include: (1) a copy of Secretary Reich's June 28 statement on OSHA reform; (2) an explanation of OSHA's employer defense policy; (3) data on citations for paperwork violations; (4) cost and benefit estimates for several OSHA rules; and (5) several letters from employers complimenting OSHA's field staff for their professionalism and assistance.

If you or your staff have questions about this information, please do not hesitate to contact us. I look forward to continued discussions with you, and your assistance in building the "New OSHA."

Sincerely,

*Joseph A. Dear*  
Joseph A. Dear  
Assistant Secretary

Enclosures



STATEMENT OF SECRETARY ROBERT B. REICH  
UNITED STATES DEPARTMENT OF LABOR  
BEFORE THE  
COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES  
SUBCOMMITTEE ON WORKFORCE PROTECTIONS

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 28, 1995

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before the Subcommittee today to review the mission and record of both the Occupational Safety and Health Administration and the Mine Safety and Health Administration -- and to discuss H.R. 1834, which would affect both agencies.

Protecting the safety and health of Americans workers -- whether they work in a factory, an office, or a mine -- is a national priority. On that, Mr. Chairman, we agree. Where we differ perhaps is on how to reach that goal. And that is what I would like to discuss this morning -- confident that whatever our disagreements over the route, we share a common destination. Let me begin with OSHA.

Worker Health and Safety In America

Since its creation in 1970, OSHA has improved the lives of America's working families. Over these last twenty-five years, the workplace fatality rate has declined 57 percent -- thanks largely to the agency's protective standards and enforcement program.

OSHA's standards have made a real difference -- often the difference between life and death -- for millions of working people. In FY 1994 alone, OSHA inspections helped make more than 40,000 workplaces safer for nearly two million working Americans.

But despite this progress -- which has been aided substantially by many responsible employers -- we still have a long way to go. For example, even in our new economy, work-related accidents and illnesses still cost an estimated 56,000 lives each year -- more than the total number of Americans killed in battle during the entire Vietnam War. Each day, another 6,000 workers are injured on the job and lose time from work. All told, safety accidents cost our economy over \$100

billion a year, and occupational illnesses cost many times more. And we all pay the price -- as employers, as workers, and as taxpayers.

But the true toll cannot be calculated in dollars and cents, for behind every number is a neighbor. Consider just one week earlier this month:

On June 9, a worker was electrocuted in Miami, another died from a fall off a ladder in Angston, Pennsylvania, and a third was killed at a Montana copper mine, when he fell from the 170-ton haul truck he was repairing.

On June 10, a worker was crushed to death underneath a forklift in Baton Rouge, and a water line inspector was asphyxiated inside a manhole in Kansas City.

On June 11, a worker was electrocuted in St. Louis, another was electrocuted in Beaumont, Texas, and two workers were killed in a fuel tank explosion in Wichita Falls, Texas.

On June 12, a worker was crushed by a crane boom in Fruita, Colorado, a construction worker fell to his death off a balcony in Bellaire, Florida, and a worker in Haven, Wisconsin was pulled into a metal press.

On June 13, a logger was run over by a skidder in Flatrock, Alabama, a construction worker in Alexander, Arkansas was killed when he was struck by a trailer loading ramp, and a worker was killed in Orrington, Maine when he became tangled in a conveyor belt and was pulled through the 6-inch space between a roller and the conveyor belt's frame.

On June 14, a worker was electrocuted in Bradford, Pennsylvania, a worker burned to death in a truck accident in Scott City, Missouri, and 3 asbestos removal workers were injured by a chemical release in Savannah, Georgia.

On June 15, a worker fell 15 floors to his death in an elevator shaft in Atlanta, three workers were killed in a head-on collision of a dump truck and a delivery truck, and a worker was crushed by a skid loader in Davis City, Nebraska.

Seven days on the job in America.

Each of these incidents represents a family's tragedy, of course. But the most tragic fact of all is that most of these incidents could have been prevented by compliance with OSHA's existing regulations. The need for a strong OSHA to protect workers remains.

### The New OSHA

At the same time, I recognize that at times in the past OSHA has focused too much on processes and activity, and not enough on safety and health. But make no mistake: OSHA is changing the way it does business. On May 16, President Clinton announced a host of dramatic initiatives the agency has been working on since 1993. These reforms are changing the agency's culture -- to ensure that we adequately protect workers without imposing unfair burdens on employers.

There are three core principles guiding these efforts. First, more cooperation. OSHA has begun to refocus its enforcement and compliance assistance efforts. We will develop a broad range of solutions, and treat good actors differently from bad actors. For employers who have made safety and health a priority, and who seek a productive partnership, we will offer incentives, compliance assistance, training and education -- and we will recognize their good efforts. But for those employers who disregard their workers' safety and health -- and Mr. Chairman, the sad fact is that some still do -- we will continue to vigorously enforce the law.

The second principle: old-fashioned common sense. OSHA is changing its approach to regulations by eliminating or fixing out-of-date and confusing standards, by identifying clear and sensible priorities for new rules, and by employing flexible "performance-based" approaches where feasible. Recently, OSHA completed a page-by-page review of its nearly 3,000 pages of regulations. The agency identified over 1,000 pages to be eliminated or revised.

The third principle: results -- not red tape. Many employers have complained that OSHA inspectors care less about worker safety than they do about meeting perceived "quotas" for citations and penalties. While OSHA has never used quotas, it has in the past used citations and penalties as performance measures. But not anymore. This year, the new OSHA ended this practice. Now OSHA's performance will be measured by results -- by its success improving the health and safety of American workplaces.

These efforts have already begun to reap rewards for employers and for workers. For example, in the Maine 200 program nearly 200 employers chose to work cooperatively with OSHA to establish safety and health programs. Doing the job themselves, these employers identified about fourteen times as many hazards as OSHA inspectors would likely have found. The bottom line: workers were safer and healthier, and employers saved money.

### Reform or Wrecking Ball?

Now, let me spend a few minutes on H.R. 1834. While the President's "New OSHA" initiative would treat responsible employers differently from neglectful ones, H.R. 1834 would provide all

employers -- including those who disregard worker safety -- with a host of exemptions and defenses against OSHA enforcement. All of us agree that the status quo will not do, which leaves us with a choice: reform or wrecking ball? I have several specific concerns with this legislation.

**Prevention Through Enforcement.** For a quarter-century, OSHA has focused on preventing workplace accidents. And the main mechanism has been an enforcement program under which the possibility of citations and fines encourages otherwise inactive employers to protect their workers. H.R. 1834 would abandon this preventive focus, by prohibiting the agency from issuing citations and penalties in the first instance unless workers are killed or injured or an imminent danger is present. Employers would receive only a "notice" even where they have ignored the most obvious hazards and shown a blatant disregard for worker safety. In addition, OSHA's enforcement program would be limited to no more than 50 percent of the agency's budget, more than half of the American businesses would be exempt from OSHA's general inspection program, and the agency would be precluded from increasing penalties for willful or repeat violations.

The consequences of these kinds of changes would ripple through the system. By taking away the agency's enforcement teeth, some companies would be encouraged to seek a short-term cost advantage by reducing their attention to workplace health and safety. And their competitors would then understandably follow in their path, launching a race to the bottom that would eventually endanger people and profits alike.

**The General Duty Clause.** At the heart of the OSH Act is the "general duty clause." This crucial provision requires employers to protect workers from all recognizable hazards likely to cause death or serious harm -- not simply the relative few workplace dangers explicitly addressed by OSHA's protective standards. H.R. 1834 effectively repeals this clause by making it unenforceable, leaving American workers exposed to thousands of serious hazards that are not currently covered by OSHA standards.

**Standards Based on Profits, Not Science.** H.R. 1834 would eliminate the National Institute of Occupational Safety and Health, which for 25 years has conducted vital research on workplace hazards, and has been essential in setting standards for asbestos, vinyl chloride, and lead, to name just a few. Without NIOSH's expertise, OSHA would have much greater difficulty establishing the extent of risks posed by particular hazards. In its place, H.R. 1834 would allow parties with a direct financial interest to participate in "peer review" panels that would guide the development of standards. Ironically, H.R. 1834's regulatory reforms are premised on the notion that OSHA needs better science to regulate workplace hazards. Yet the bill would eliminate the only federal agency that conducts research on such hazards.

**Employee Complaints.** One of the core premises of the OSH Act is that where workers fear



retaliation from their employers, they have a right to seek OSHA's help in addressing workplace hazards. But under H.R. 1834, workers would be banned from contacting OSHA unless they had first raised the problem with their employer -- even when the worker faced an imminent danger on the job, and even when bringing up the issue with the employer could trigger retribution. This approach would likely discourage many workers from raising legitimate safety and health concerns.

**Layers of New Bureaucracy.** In the name of deregulation, H.R. 1834 would force OSHA to establish many new layers of bureaucratic process, and to slog through each of those layers before it could protect workers from emerging hazards. The bill would impose rigid, "one-size-fits-all" risk assessment and cost-benefit analysis criteria, require costly, redundant peer reviews, and establish a new regulatory petition process to allow perpetual challenge to OSHA's protective rules. These proposals would likely waste millions of taxpayer dollars and delay rules for months or years at the expense of workers' safety and health.

**More Litigation.** H.R. 1834 establishes many new bases for employers to challenge OSHA's protective standards in court, virtually guaranteeing years of legal challenges before workers can be protected. In the meantime, working men and women would continue to suffer fatalities, injuries and illnesses that could otherwise have been avoided. The workers who would most benefit? Lawyers.

**Employer Domination.** Employee involvement is one of the most important means of improving workplace safety and health. And that involvement doesn't have to compromise workers' representational rights. Nevertheless, I am afraid that in the name of labor-management cooperation, H.R. 1834 would allow employers to dominate, interfere with or otherwise control any labor organization -- in effect, to sit on both sides of the bargaining table -- as long as no contract is signed.

### **Protecting Workers In America's Mines**

The final objection I have to H.R. 1834 is significant, and merits a more detailed discussion. This legislation would pose a substantial threat to America's miners and America's mining industry. It would force a severe -- and even dangerous -- revision in federal mine safety and enforcement.

Since 1910, the federal government has been addressing the hazards in our nation's mines. Six decades before the OSHA law was enacted, the federal government began fashioning a system and a set of rules that have succeeded in reducing death and disease in the nation's mines. This bill would be the first federal statute ever to weaken protections for miners.

Here's specifically what H.R. 1834 would do: It would repeal most of the Federal Mine Safety and Health Act of 1977. It would merge the Mine Safety and Health Administration (MSHA), which

enforces the Mine Act, with OSHA. And current mine safety and health standards -- with important exceptions -- would be enforced under the weakened provisions of the worker safety law I described earlier in my testimony.

But changing the legislative apparatus would do nothing to alter this fact: mining is one of the most dangerous industries in the country, and in the world. The work environment changes quickly -- and without notice. As one hazard is corrected, another may appear. Miners still die in explosions. Miners still die in roof falls. Miners still die in blasting accidents. And miners still develop black lung and silicosis -- because problems in monitoring and controlling dust levels have so far been beyond our capacity to solve.

Sometimes we forget where the marvels of the mining industry come from -- gold and gravel, salt and stone, computer chips and cosmetics -- and what was necessary to get them. But I won't forget. On the fortunate occasion of Davitt McAteer's swearing in as Assistant Secretary, I had the opportunity to go into the mines. There, far below the earth's surface, I saw the work miners do . . . work that demands sharp skills and hard-won expertise. Since then, I've had a deep appreciation for the courage shown by miners every day -- and for the importance of a safe and productive mining industry.

Now, with respect to mining, H.R. 1834 begins with a valid premise: that we have made strides over the last several decades in improving the health and safety of our miners. But the conclusion drawn from that premise -- that the Mine Act should be repealed and MSHA eliminated -- is badly flawed. Coal miners are five times less likely to be killed on the job than they were in 1969, and metal miners twice less likely to die -- largely because we had the law and the agency in place. At the same time, productivity has soared.

But H.R. 1834 would reverse much of this progress. Taken together, the provisions of this legislation reflect an approach to mine safety and health that already has been tried -- and rejected: Mine inspections would be severely curtailed, even for gassy mines where the danger of explosion is high. MSHA's most effective enforcement tools would be eliminated or restricted. Miners who stand up for safety would lose rights and remedies. The issuance of every new mine safety and health standard would be subject to a series of burdensome requirements, likely to increase litigation and regulatory gridlock. Existing standards -- like the standard for respirable coal mine dust that protects miners from black lung -- would be threatened by the same unnecessary strictures.

In every respect, the ability of the Federal Government to protect miners would be seriously weakened. H.R. 1834 is presented as a cost-cutting measure, designed to make better use of the Federal Government's resources for occupational safety and health. Mr. Chairman, that aim is admirable. Unfortunately, H.R. 1834 would mean greater risks for miners, without offering better

protection for other workers.

But our opposition to H.R. 1834 should not be seen as an unwillingness to pursue genuine reform and innovation. Under the leadership of Davitt McAteer, MSHA has worked hard at refining its programs, with good results. MSHA's Small Mines Summit focused on the safety problems of small mine and helped them comply with the law. The Agency has opened up its policy-making process to the public. It is re-examining the scope and purpose of its mine inspections, while increasing education and training and compliance-assistance efforts. At the President's direction, MSHA has reviewed its regulations page-by-page to identify obsolete rules. It is exploring the prospects for negotiated rule-making, for reduced reporting requirements, and for minimizing penalties for non-serious violations. MSHA is ready to expand on promising initiatives like these. But it is not ready to abandon its core mission.

#### A Commitment to Cooperation

Mr. Chairman, as I said at the beginning of this testimony, you and I differ -- but we differ more about means than about ends. And that signals to me that we can work together toward a common goal. Indeed, I stand ready to work with you to move forward on this critical issue. I want to work with you to respond to the anecdotal stories that have pervaded this debate, to check the facts and to fix problems where we find them. I want to tell you more about the striking progress we are making with the President's "new" OSHA and our initiatives at MSHA. And I want to work with you to ensure that any legislative reforms make the workplace safe and healthy for the millions of men and women who make the American economy the envy of the world.

Thank you very much.

###

Employer Defense Policy

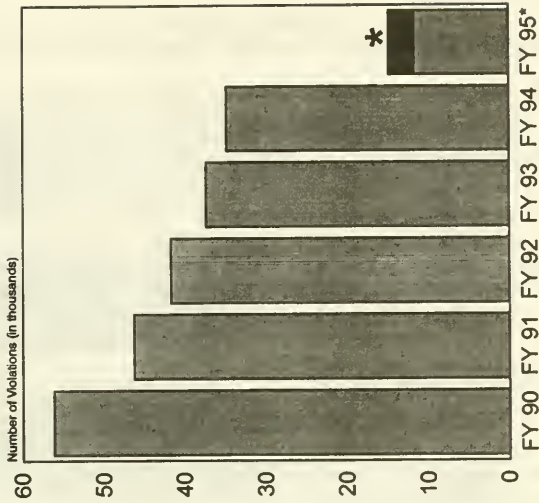
During the July 26 hearing, Mr. Rick Palmer asserted that OSHA will issue a citation to an employer even when employees simply decide not to follow safety rules. Since the early 1980's, OSHA's actual policy has been the following:

When an OSHA compliance officer conducts an inspection and determines that employees are systematically refusing to comply with safety and health standards and rules, OSHA will excuse the employer from a violation. The employer would have to demonstrate that (1) his or her employees had received appropriate training and the necessary equipment; (2) the employer had communicated and enforced the work rules designed to prevent employee misconduct; (3) the employees failed to observe work rules that led to the violation; and, (4) the employer had taken reasonable steps to discover the violation.



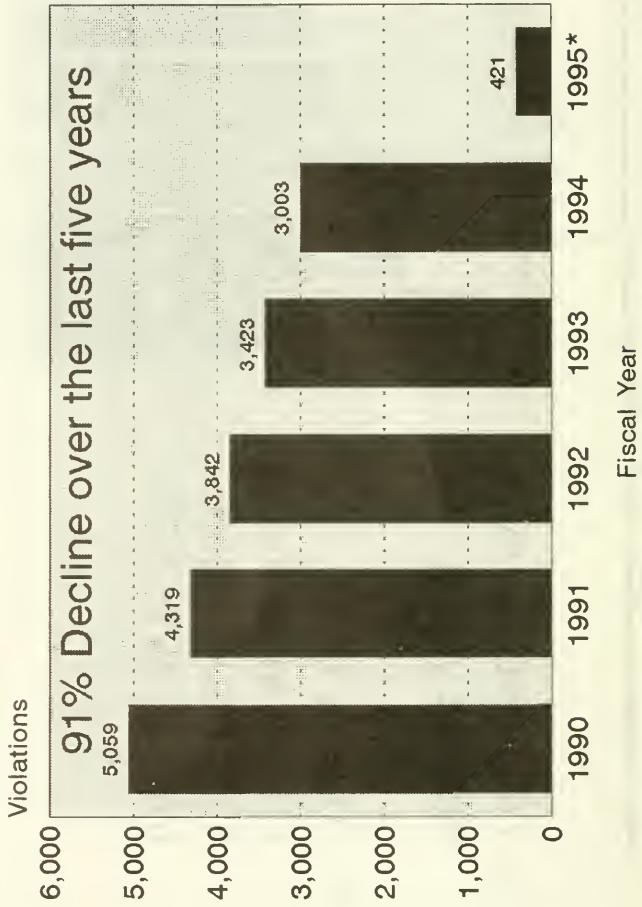
# Declining Paperwork Violations

- ✧ 74% decline over last six years
- ✧ As a % of all OSHA violations, they have fallen from 27% to 15%



Paperwork violations include recordkeeping requirements, OSHA poster, and hazard communication  
\*Less than 15,000 estimated total for FY 95

# DECLINING POSTER VIOLATIONS



### **OSHA Regulations: Benefits to Workers and Employers Certainly Justify the Costs**

When OSHA proposes a new safety or health standard, or a revision to an existing rule, it examines the benefits of the rule, the cost of complying with the rule, and the economic and technological feasibility of the rule for each affected industry, including effects on small firms. OSHA calculates the dollar value of the costs of the rule, but does not place a monetary value on workers' lives, safety or health. Instead, the benefits of OSHA rules are expressed as the number of fatalities avoided and the number of serious injuries or illnesses prevented.

Many of the benefits of regulation transcend any simple tallying of costs and benefits because many factors cannot be expressed in monetary or even quantitative terms. It is impossible to determine, for instance, the precise worth of a new technology or a changed work practice. It is even more difficult to place value on the pain and suffering experienced by injured workers, or to evaluate the loss of a limb or the impairment of critical organs.

The following are just a few examples of OSHA rules, showing clearly that the benefits of protective safety and health standards justify their costs.

**Lead Poisoning:** In 1993, OSHA issued a rule to protect construction workers from exposure to inorganic lead, a substance that is absorbed into the body when it is breathed or ingested. The lead accumulates in the blood, organs and bones and is slowly released back into the bloodstream over time, causing anemia, brain and nerve disorders, high blood pressure and reproductive problems.

**Annual Cost Estimate:**

- \$365 million to \$445 million

**Annual Benefits:**

- More than 24,000 workers will be spared the damaging effects of dangerously high blood-lead levels every year.
- Over a ten-year period, the rule is projected to prevent more than 2,300 heart attacks, nearly 700 strokes, and up to 2,000 cases of kidney disease.

**Collapsed Trenches:** In 1989, OSHA issued a revised standard to protect workers from accidents and injuries caused by collapsed trenches and cave-ins at excavation sites. During the four-year period beginning in 1987, an average of 46 U.S. workers were killed each year in such accidents, many of which were preventable. The rule requires employers to use any of several methods to protect their workers from being buried alive.

**Annual Cost Estimate:**

- \$306 million

**Annual Benefits:**

- An estimated 74 workers will avoid dying of suffocation in collapsed trenches or excavation-related accidents, and more than 3,000 workers will be protected from serious injuries.

**Exposure to Hepatitis B and HIV:** In December 1991, OSHA issued a rule to protect workers who are routinely exposed to blood or other material infected with the viruses that cause Hepatitis B, HIV, or other bloodborne diseases.

**Annual Cost Estimate:**

- \$817 million

**Annual Benefits:**

- Nearly 200 workers will avoid death from Hepatitis B, and up to 8,800 workers will avoid contracting the disease which is incurable and progressive. With respect to HIV infection, OSHA was not able to make a precise projection of the number of job-related cases that will be avoided. OSHA believes, however, that the precautions required by the rule will reduce workers' exposure to HIV, preventing them from developing AIDS.

**Confined Spaces:** In 1993, OSHA issued a rule to protect workers from the hazards created by working in confined spaces (which pose special dangers to workers because their size or dimension can create toxic, asphyxiating, or other life-threatening atmospheres.)

**Annual Cost Estimate:**

- \$202 million

**Annual Benefits:**

- The lives of more than 50 workers who work in confined spaces will be saved and more than 5,000 such workers will avoid serious injuries every year as a result of the rule.

**Electric Power Generation, Transmission and Distribution:** In 1994, OSHA revised its out-of-date consensus standard for electric power generation, transmission and distribution with performance-based approaches. The rule is designed to protect line workers, apprentice line workers, general utility mechanics and others from electrocution and injuries due to electric shock.

**Annual Cost Estimate:**

- \$41 million (first year), and \$22 million (subsequent years)

**Annual Benefits:**

- More than 60 workers will be saved from fatal electrocutions and more than 1,600 workers will avoid serious injuries every year.

**Lockout/Tagout:** In 1989, OSHA issued a rule to protect workers from the sudden activation of machinery while its being serviced or repaired.

**Annual Cost Estimate:**

- \$214 million in the first year, and \$135 million in subsequent years.

**Annual Benefits:**

- More than 120 workers will be saved every year by this protective rule and more than 28,000 workers will avoid serious injuries.





145 MANCHESTER PLACE

NEWARK, NEW JERSEY 07104

TEL 201-485-2009

FAX 201-485-0861

May 23, 1995

Mrs. Peggy Krishnan  
Occupational Safety & Health Administration  
Suite 304  
299 Cherry Hill Road  
Parsippany, New Jersey 07054

Dear Mrs. Krishnan,

I have been meaning to write this letter some time ago, but only recently had the opportunity. As I am sure you will recall, your office conducted an inspection of our facility in October of last year. One of the issues that was addressed was that of our Fire Prevention/Fighting Program. To our dismay and embarrassment it was revealed that we never actually conducted a formal training program for fire fighting. As part of a 'quick fix' program we then conducted fire prevention training prior to the abatement date. The training consisted of the location and use of fire extinguishers and water hoses and an evacuation plan. As happenstance would occur, we did in fact have a fire about a week after the training program was conducted. I was amazed to see how our people were able to respond. Thanks to our training, the fire was out quickly. As a waste paper recycler, our fear of fire is enormous. Since then, we have purchased additional fire fighting equipment and conduct regular fire fighting drills. Please let this letter serve as a note of appreciation. Who knows what could have happened if it weren't for your recommendations on Fire Prevention training. It is not the most pleasant of experiences when OSHA walks thru your door but it saves life and injury from occurring. It makes one realize why your there in the first place.

Thank you.

Very truly,

*William M. Lehman*  
William M. Lehman  
Recycling Specialist

# Vorys, Sater, Seymour and Pease

52 East Gay Street • Post Office Box 1006 • Columbus, Ohio 43216-1006 • Telephone (614) 464-6400 • Facsimile (614) 464-6350 • Telex 241348 • Cable VORYSUSA

Arthur J. Vorys  
1976-1981  
Edward J. Sater  
1967-1975  
Augustus T. Seymour  
1975-1982  
Edward J. Pease  
1975-1982

W. Ward Smith  
Senior Counsel  
1825 L Street, N.W.  
Washington, D.C. 20036-5101  
Telephone: (202) 462-6000  
Facsimile: (202) 462-6000  
Telex: 447691

James P. Fried  
2800 Ohio Boulevard Center  
1775 East Ninth Street  
Columbus, Ohio 43216-1725  
Telephone: (614) 470-4000  
Facsimile: (614) 470-4000

Robert L. Smith  
2000-2001, 2002-2003  
222 East Tenth Street  
Columbus, Ohio 43216  
Telephone: (614) 470-4000  
Facsimile: (614) 470-4000

Writer's Direct Dial Number  
(614) 464-6219

May 25, 1995

Mr. Howard Eberts  
U.S. Department of Labor  
Occupational Safety and Health Administration  
200 North High Street  
Columbus, Ohio 43215

Re: Glacier Vandervell, Inc.

Dear Howard:

I write to compliment you on the way that you handled the closing conference yesterday at Glacier Vandervell. You really did reflect a "New OSHA" in stating your interest in participating in the development of "solutions" and then measuring the effectiveness of those solutions. As you and I both know, that is far different from "Old OSHA" which simply cited employers and said that the abateements of those cited conditions were the problem of the employer. It is my personal sense that your willingness to work with Glacier Vandervell in the development of priorities and abatement methods will be well received and achieve the desired positive results.

Again, it was good to see you yesterday and I will look forward to continuing to work with you and your team in implementing the appropriate corrective action at their facility in Caldwell.

With best regards.

Very truly yours,

ESTAB-438  
COV - 21

James P. Fried

JPF/pp

**ROCKFORD DROP FORGE CO.**

2031 NINTH STREET  
 ROCKFORD, ILLINOIS 61104-5327 / AREA CODE 815-963-9611

May 26, 1995

U.S. Department of Labor  
 Occupational Safety & Health Administration  
 344 Smoke Tree Business Park  
 North Aurora, IL 60542-2160  
 Mr. Charles J. Shields, Area Director

Re: Inspection No. 122307390 ✓

Dear Mr. Shields,

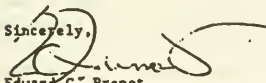
We had previously requested an extension to 5/31/95 on the abatement of Citation No 1, item 2. We are pleased to state that we were able to complete our work early, and as of this date all of the items in Citations 1 and 2 have been completed.

These items which were not corrected at the time of the inspection have now been abated. Documentation and/or photographs are attached showing the work that has been done. The signed "Certification of Correction" is attached, and copies have been posted in a manner and place for review by affected employees.

We appreciate the professional and competent manner in which this matter has been handled, and would specifically compliment Mr. John W. Wilhelm for the manner in which he conducted the inspection. We would hope that all OSHA Inspectors are as knowledgeable and professional, as was Mr. Wilhelm.

We assume this will bring the matter to a close. However, please advise if there are any other questions or problems.

Sincerely,

  
 Edward C. Prenot  
 President

ECP/cakw

attchs.



WHEN IT'S A VITAL PART, MAKE SURE IT'S

**FORGED**



# REYNOLDS METALS COMPANY

Mill Products Division  
1st Avenue and 47th Street • McCook, Illinois 60525-3294 • (708)485-9000

December 3, 1992

Mr. Gary J. Anderson  
Area Director, OSHA  
1600 167th St.  
Suite 12  
Calumet City, IL 60409

Dear Mr. Anderson:

Reynolds Metals, McCook Plant, has recently reached a settlement agreement with your office regarding a fatality accident to John Vandercar, a millwright at our plant. The safety specialist who conducted the investigation was Kathy Maschmeyer. While this entire episode was very upsetting to the plant, I have been asked on behalf of all the employees who were involved in the investigation to offer our compliments to your office on the way that Kathy handled the investigation.

Kathy was extremely thorough and did not hesitate to work the long hours and irregular schedule that were necessary to interview all the people involved. She is courteous and professional in her dealings with people, but at the same time she has a knack for putting them at ease. We never felt that she was an adversary--no one had any reservations about talking to her.

The most important thing that we would like to say on Kathy's behalf, though, is that she dealt with us in a fair and objective way. We acknowledge the problems we were cited for and we will work to correct them as quickly as possible. We are happy that the matter has been resolved this quickly and we feel that Kathy was largely responsible for the outcome. She is a credit to your office.

Sincerely,

Jeffrey F. Stewart  
Maintenance & Eng. Supt.

k

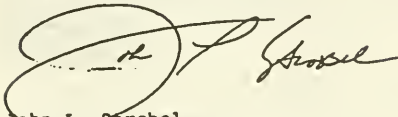
c: C. G. Jones, J. B. Henry, B. J. Sasser, K. Maschmeyer

JFS12-3.001

The check for Metalcraft of Mayville's citations is enclosed.

Sincerely,

METALCRAFT OF MAYVILLE, INC.



John L. Strobel  
Executive Vice President

JLS/dg

cc: Ron Lock, Manufacturing Manager, Metalcraft of Mayville.  
Ian Watts, Compliance Office, U.S. Department of Labor  
Mark Fontaine, Compliance Officer, U.S. Department of Labor

Enclosure



9530

# Metalcraft of Mayville

FABRICATED METAL PRODUCTS

1000 Metalcraft Drive  
Mayville, Wisconsin 53050  
(414) 387-3150  
Corp. Fax (414) 387-0199  
Sales Fax (414) 387-4157

April 13, 1995

U.S. Department of Labor  
Occupational Safety & Health Admin.  
Mr. Donald R. Brzowski  
4802 E. Broadway  
Madison, WI 53716

Dear Mr. Brzowski,

I just wanted to follow-up on our meeting of April 7, 1995. I want to thank you and your staff for the time you took to go over the citations and listen to our actions to follow-up on those citations and what we are doing about them now and what we have done in the past.

I believe the informal settlement agreement was reached on a win/win basis and Metalcraft will be able, with the knowledge learned, to do a better job on our safety objectives after this inspection then we would have had without the inspection on our own.

I do want to reiterate to you the professionalism of your 2 compliance officers, Mr. Ian Watts, and Mr. Mark Fontaine. No one likes to be informed that there is a compliance officer at your door, but both Ian and Mark conducted themselves in a professional manner with a helpful attitude throughout the inspection. They got to know our employees and called them by name, which is how we want our employees and ourselves treated. A 2 week inspection is demanding on everyone, but they worked around our schedule and never caused any unnecessary hardship or work stoppages, and we appreciate that.

We will be following up on all the abateements and have them completed prior to the due date and submitting an action plan per our informal agreement. We will be conducting our formal supervisor training and I want to thank you for the packet of information to be used by the trainer when talking with our supervisors. I had a chance to read it over and found some very helpful, positive material that I can use when talking with our supervisors. I am also going to send all of our supervisors out to a 10 hour OSHA voluntary compliance instruction. I know that I do not have the experience of a safety professional to teach our supervisors some of the requirements they need to have. We are also going to send part of our safety committee group to the same course.

---

•Keith Kuchenbecker Roofing & Construction, Neenah WI,  
4 employees

A CSHO from the Appleton WI Area Office observed the employer and three of his employees shingling a roof on a new single-family home. The eave to ground height was 18 feet, so an inspection was done under a local emphasis program for fall protection. Mr Kuchenbecker was informed about the apparent violation of the existing standard, and a discussion ensued about the new fall protection rule that had not yet taken effect. The employer expressed his fears and apprehensions, relating the rumors he had heard about severe penalties, uncompromising regulators, and worksites being closed down. He was uncertain that roofing work was feasible while wearing harnesses and ropes. The CSHO offered assistance.

**RESULT:** One week later, Mr. Kuchenbecker visited the Area Office, requesting that OSHA put on a training session for him and other small companies in the area. Mr. Kuchenbecker offered the basement of his home as the training site, and the session was attended by 45 individuals, primarily small residential contractors. Those who attended were satisfied with the presentation, passed the word and more sessions were scheduled.

One month later, Mr. Kuchenbecker visited the Area Office again. He had purchased harnesses and lanyard, and was using them on his jobs. After a short break-in period, he reported that the time required for their jobs, especially on steep roofs, was reduced by as much as half when the fall protection was used. Mr. Kuchenbecker said that they were doing their work faster, and he was getting more bids because general contractors favor subcontractors who comply with OSHA regulations. This employer has even offered to serve as a resource for other small employers, and has offered his worksite as a setting to film training videos.

May 16 / Administration of William J. Clinton, 1995

off from work to let us come in and interrupt the flow of events. I'm sure that's not a terrible burden. [Laughter] I want to thank Mr. Gawne for having us here. Mr. and Mrs. Gawne made us feel very welcome when we came in, and they didn't waste much time in establishing the productivity of their leadership by pointing out that they have 6 children and 14 grandchildren, and most of them are here today. [Laughter] I'd also like to say a special word of appreciation to the Vice President's reinventing Government team who worked so hard on this—Elaine Kamarck is here and many others who worked so hard on it. I thank all of them.

We have taken this business of trying to make the Government work and make sense very seriously. We have worked at it steadily now for a good long while. We think it's one of the most important things we can do to make the American people believe, first of all, that their tax dollars are not being squandered but instead are being well spent and, secondly, to fulfill some important public objectives.

Protecting the health and safety of our country's workers is an important national value. It's something we should all share. From the Triangle Shirtwaist fire back in 1911, which galvanized the conscience of our Nation, to the fire in Hamlet, North Carolina, in 1991—which I remember so very well because 25 poultry workers were killed there and thousands and thousands of people work in the poultry industry in my home State—we have recognized that we have a special responsibility as a people to ensure that workers are not put in undue jeopardy. We don't believe that anyone should have to endanger their personal health or their very lives to make a living for their families, to live a life of dignity.

But still, in spite of all the progress that has been made, over 6,000 Americans every year die at work. That's 17 a day. And about 50,000 more people die each year from exposure to chemicals and other hazards in the workplace. Six million Americans are injured, and the injuries alone cost our economy over \$100 billion a year. So it is obvious that we still have work to do and that to whatever extent we can reduce death and injuries in the workplace, we will not only improve the

## Remarks on the National Performance Review

May 16, 1995

Thank you very much, Mr. Vice President, Secretary Reich, Mr. Dear, to our friends from Maine, all of them, for the fine work they have done. Congresswoman Norton and members of the DC City Council and others who are here, we're glad to be in the District of Columbia and in one of the most interesting workplaces I've been in in a while. I want to thank the folks who work here for making us feel welcome and for taking a little time

quality of life in this country, we will also reduce the cost of these terrible tragedies in ways that strengthen our economy.

The Occupational Safety and Health Administration has been at work in this cause since it was created with bipartisan support in 1970. Since that time, workplace deaths have been cut in half. Cotton dust standard has virtually eliminated brown lung disease. Deaths of construction workers from collapsing trenches has been cut by a third. There have been many achievements that all Americans can be proud of. And today, we should reaffirm that commitment.

But we also have to recognize that like other Government regulatory agencies, OSHA can and must change to keep up with the changes and the times. We also recognize that any organization that is established and gets going in a certain direction, if it's not careful, whether it's in the public or the private sector, can wind up pursuing prerogatives that strengthen its organization rather than fulfill its fundamental mission.

That was the brilliance of the story that the Vice President told about what the Maine OSHA people did and how they changed, not only replacing yesterday's Government with a new Government that fits the needs of an information age that is less bureaucratic and that recognizes that the way we protected workers' safety in the last 25 years may not be the best way to do it in the next 25 years but also recognizing that, frankly, sometimes the rules have simply become too complex, too specific for even the most diligent employer to follow and that if the Government rewards inspections for writing citations and levying fines more than ensuring safety, there's a chance you could get more citations, more fines, more hassle, and no more safety.

So we believe that in this, as in every other area, we have to constantly innovate. And we're announcing these initiatives today.

Let me say to you that of all the things we've done in reinventing Government, this one has a particular personal meaning to me because of the experience I had for so many years as the Governor of my State. We were one of 29 States, first of all, that had a partnership with OSHA. And we worked hard to help implement the worker standards that the National Government set with State peo-

ple who worked in partnership with manufacturers, because in the 1980's, when manufacturing was going downhill in America, we were increasing manufacturing employment in my State, partly because we had that kind of partnership.

I was interested in it from a human perspective because I spent so many hours, countless hours, in literally hundreds of factories in my State talking to the people who worked in the factories, watching what they did. And finally, I became personally acquainted with it because for several months in one year I was Governor, I took a day off a month to work in manufacturing operations. That will give you a clear perspective about wanting to be safe in the workplace. I worked in a food processing plant. I worked in a joist manufacturing operation. I helped to make refrigerators from 3 p.m. to midnight one night on a Friday night. And I even worked in an oil refinery. And it gave me a keen appreciation, first of all, for the need of people who are operating these things to be treated in a fair and sensible way by the Government so people could make a living and they could make a profit; and, second, for the absolute imperative for people to be able to work in a safe and secure environment.

Unless you've ever seen one of those huge metal stamping machines come down on a piece of sheet metal, you can't imagine what it was like to think about the days when people had to put their hands under those machines with no guards, knowing one mistake would be the hand would be gone forever. Unless you've actually seen things like that, it is hard to visualize what is at stake here.

We believe in this country that you can do the right thing and do well. We believe that is a general principle that we have to have throughout the economy. Mr. Correll, here from Georgia Pacific—I've been in every single one of his operations in our home State. And they have done some remarkable things. I believe you can do the right thing and do well. And we have to see day in and day out that we have a Government that makes sure we're all trying to do the right thing and that we can do well at the same time.



That is what we are trying to do today, saying to businesses, you have choice. You can put in place a health and safety program that involves your workers and that tries to find and fix hazards before an accident happens, and OSHA will be a partner. There will be reduced penalties or, in some cases, no penalties at all. You will be inspected rarely, if ever. You will get help when you want to comply. But if a business chooses not to act responsibly and puts its workers at risk, then there must be vigorous enforcement and consequences that are serious when violations are serious.

This new approach is not an abstract one. We have seen it. It works in Maine. If it worked in Maine, it will work everywhere else. To borrow a phrase from politics: I hope when it comes to worker safety, as Maine goes, so goes the Nation.

Secondly, we need to make sure that worker safety rules are as simple and sensible and flexible as they can be. You've already heard the Vice President say that OSHA will now allow plastic gas cans on construction sites. That may not sound like a big deal, but it's absolutely maddening if you're on the other side of a dumb regulation like that. Until now, OSHA required that work site first aid kits be approved by a doctor. That doesn't make a lot of sense. So, from now on, you can buy one at the drugstore.

This is just a downpayment on the things that we intend to do. As part of the page-by-page regulatory review I ordered earlier this year, on June 1st, I expect to see dozens and dozens more rules on my desk ready to be discarded or fixed, including hundreds of pages of detailed standards that have literally been on the books unchanged since the early 1970's.

The third thing we intend to do is to extend our reinvention to the way men and women on the front lines work with employees and businesses to promote safety. I'm interested in results, not redtape. The Vice President says that all the time. We're determined to make that the rule of the land, in worker safety, in the environment, in every other area that we can possibly extend it to.

We're interested in prevention, not punishment. It would suit me if we had a year in this country where OSHA did not levy a

single fine, because if that happened, we'd have safer workplaces, more productive businesses, we'd be making more money with happier people going to work every day.

We are going to redesign OSHA's offices, five of them every quarter, to produce safety, not just citations. We're cutting the time between the complaint by a worker and the resolution of a problem in half. We're focusing inspections on the gravest hazards. Already if a construction site has a strong health and safety program, inspectors are limited to the biggest hazards, lasting a few hours, not a few days. Now we'll expand that to other industries as well.

We want to use common sense and market incentives to save lives. Last year, the OSHA office in Parsippany, New Jersey, had an idea: Rather than finding a hazard, writing a citation, fighting for months about it, why not give the employer a financial incentive to simply fix it on the spot? That leads to more safety and much less hassle. Lives are already being saved there, too. And today, we are determined to expand this so-called quick fix program nationwide. There really are some quick fixes when you're dealing with stale bureaucracy, and we intend to find them all and put them into effect. Giving employers a choice, common sense regulation, common sense enforcement: that will be the new OSHA, the right way to protect the safety of people in the American workplace.

But even as we take these steps, we have to recognize that there is a very different approach at work here in Washington. The leadership of the new Congress is mounting an assault on our ability to protect people in the workplace at all. Responding to the entreaties of powerful interest, they are ready to throw the baby out with the bath water and, in so doing, to put at risk the health and safety of millions of ordinary American workers. They're not trying to reform the system of worker protection as we are but instead to dismantle it and, therefore, to destroy our ability to pursue its fundamental purpose.

The budget proposed in the Senate would cut in half the funding for worker health and safety, decimating enforcement, research, and even compliance assistance, something that I've found in my own personal experi-



ence to be the most important thing of all with employers of goodwill. The House budget would even eliminate outright the National Institute of Occupational Safety and Health. They say they don't want redtape, but this is an agency with no inspectors, the National Institute of Occupational Safety and Health. They say we should be guided by better scientific evidence in our work, and I agree. This agency exists solely to give us better evidence to guide our work. The Safety and Health Institute does important work, it doesn't cost a lot of money, and we ought to preserve it.

The regulatory legislation moving through Congress, which was literally written by lobbyists who then wrote speeches for the Members to explain what it is they were introducing and supporting, would tie worker protection efforts up in knots. It would override every health and safety standard on the books and let special interest dictate the regulatory process. They have proposed freezing all Federal regulations and have gone after the worker protection standards with a little bit of extra gusto. They don't want rigorous reform. It looks to me like they want rigor mortis. [Laughter]

Now, I am the last person in the world to stand up here and defend some dumb rule, regulation, or practice or people who say that people who are elected come and go; we'll be here in this agency forever; you do it our way or not at all. But we have proved, we have proved, that most Federal employees want to do the right thing, that they want the American people to do right and to do well. We have proved that we can change the culture of bureaucracy. And we're going to do more of it.

So we should reform. We absolutely should. But we should not roll back our commitment to worker safety. Remember, there's still a lot of folks out there working in situations that are dangerous. And not every workplace can make—be made 100 percent safe. I know that. And workers have a responsibility to take care of their own safety and to be careful and to be diligent. I know that. But we have a public responsibility that all of us share as Americans to work for safer workplaces.

If we take that seriously and we apply ourselves to the task in the way the Vice President and the Secretary of Labor have outlined today, if we follow the example of the fine OSHA leaders, business leaders, union leaders like those we recognized in Maine today, we can do what we need to do. We can do what we need to do and still pursue the public interest.

We do not have to grow the American economy by going back to the time when we acted as if worker safety doesn't matter. It does matter. It matters a lot to people. And just because the Government has been slow on the uptake in the past, and every now and then somebody makes a mistake and overreaches, doesn't mean we can walk away from our fundamental public duty.

So let's continue on this path. Let's change this thing. Let's make it work. Let's lift unnecessary burdens and keep making sure we're committed to the health and welfare of the American workers so we can do right and do well.

Thank you very much.

NOTE: The President spoke at 12:48 p.m. at the Stromberg Sheet Metal Works, Inc. In his remarks, he referred to Assistant Secretary of Labor for Occupational Safety and Health Joseph Dear; Robert Gawne, CEO, Stromberg Sheet Metal Works, Inc., and his wife, Patricia; Senior Policy Advisor for the Vice President Elaine Kamarck; and A. D. "Pete" Correll, chairman and CEO, Georgia-Pacific Corp.

*The New OSHA*

*Reinventing*

---

WORKER SAFETY AND HEALTH

---



PRESIDENT BILL CLINTON  
VICE PRESIDENT AL GORE

---

*May 1995*

***THE NEW OSHA: REINVENTING WORKER  
SAFETY AND HEALTH***

**President Bill Clinton  
Vice President Al Gore**

**National Performance Review**

**May 1995**

## Contents

	<b>Page</b>
<b>Introduction: The Need for OSHA—The Need for OSHA to Change</b>	<b>1</b>
<i>The New OSHA</i>	<i>2</i>
<i>Common Sense Regulation</i>	<i>2</i>
<i>Results, Not Red Tape</i>	<i>2</i>
<b>The New OSHA: Partnership or Strong, Traditional Enforcement</b>	<b>3</b>
<i>Nationalize the "Maine 200" Concept</i>	<i>4</i>
<i>Focused Inspections for Employers with Strong and Effective Safety and Health Programs</i>	<i>4</i>
<i>Incentives for Employers with Safety and Health Programs</i>	<i>5</i>
<i>Employee Participation in Safety and Health Efforts</i>	<i>5</i>
<b>Common Sense Regulation</b>	<b>5</b>
<i>Priority Planning Process</i>	<i>6</i>
<i>A Logical Framework of Basic Building Blocks</i>	<i>6</i>
<i>Improve, Update, and Eliminate Confusing and Out-of-Date Standards</i>	<i>6</i>
<i>Hazard Communication and the Right to Know</i>	<i>7</i>
<i>New Approaches to New Hazards</i>	<i>7</i>
<i>OSHA's Involvement in Non-Traditional Sectors</i>	<i>8</i>
<b>Common Sense Enforcement: Results, Not Red Tape</b>	<b>8</b>
<i>Field Office Redesign—Getting Results and Improving Performance (GRIP)</i>	<i>9</i>
<i>Strengthen OSHA's Partnership with State Programs</i>	<i>9</i>
<i>"Quick Fix": Incentives for Fixing Hazards Quickly</i>	<i>9</i>
<i>Improvements in Inspection Targeting System</i>	<i>9</i>
<i>Compliance Assistance Through Information Technology</i>	<i>10</i>
<i>Measuring OSHA's Performance</i>	<i>10</i>
<b>Appendix A - OSHA's Principles for Protecting America's Workers</b>	<b>A-1</b>
<b>Appendix B - Brief Descriptions of OSHA Initiatives</b>	<b>B-1</b>

## Introduction: The Need for OSHA—The Need for OSHA to Change

*We have to recognize that, done right, regulation protects our workers from injury, and that when we fail, it can have disastrous consequences. I believe we can bring back common sense and reduce hassle without stripping away safeguards for our children, our workers, our families.*

President Clinton, February 21, 1995

A safe workplace is central to our ability to enjoy health, security, and the opportunity to achieve the American dream. Accordingly, ensuring worker safety in a complex and sometimes dangerous modern economy is a vital function of our government. Since OSHA's inception in 1970, the agency's mission has been clear and unwavering for nearly 25 years: "...to assure so far as possible every working man and woman in the nation safe and healthful working conditions." That mission—to save lives, prevent injuries and illnesses, and to protect the health of America's workers—remains vital today.

OSHA and its 25 state partners have had substantial success. Since 1970, the overall workplace death rate has been cut in half. OSHA's cotton dust standard virtually eliminated brown lung disease in the textile industry; deaths from trench cave-ins declined by 35 percent; OSHA's lead standard reduced blood poisoning in battery plant and smelter workers by two-thirds. Experience also has shown that OSHA inspections can have real, positive results. According to a recent study, in the three years following an OSHA inspection that results in penalties, injuries and illnesses drop on average by 22 percent.<sup>1</sup> Overall injury and illness rates have declined in the industries where OSHA has concentrated its attention, yet have remained unchanged or have actually increased in the industries where OSHA has had less presence.

OSHA's pride in its accomplishments is tempered by two realities. First, despite OSHA's efforts, every year more than 6,000 Americans die from workplace injuries,<sup>2</sup> an estimated 50,000 people die from illnesses caused by workplace chemical exposures,<sup>3</sup> and 6 million people suffer non-fatal workplace injuries.<sup>4</sup> Injuries alone cost the economy more than

<sup>1</sup>Wayne B. Gray and John T. Scholze, "Does Regulatory Enforcement Work?" *Law & Society Rev* 27 (1):177-213, 1993.

<sup>2</sup>Guy Toscano and Janice Windau, "The changing character of fatal work injuries," *Monthly Labor Review* 117 (10):17, October 1994.

<sup>3</sup>Estimates derived from R. Doll and R. Peto, "The Causes of Cancer: Quantitative Estimates of Avoidable Risks of Cancer in the United States Today," *J Nat Cancer Inst* 66(6):1191-1308, June 1981; J. Higgenson, "Proportion of Cancers Due to Occupation," *Prev Med* 9(2):180-188, March 1980; and P.J. Landrigan and D.B. Baker, "The Recognition and Control of Occupational Disease," *JAMA* 66(5):676-680, August 7, 1991.

<sup>4</sup>Bureau of Labor Statistics, *Survey of Occupational Injuries and Illnesses*, 1993.



\$110 billion a year.<sup>5</sup> These numbers are too high because many workplace injuries and illnesses are predictable and preventable. Workplaces must be encouraged to make breakthrough improvements in injury and illness rates.

Second, in the public's view, OSHA has been driven too often by numbers and rules, not by smart enforcement and results. Business complains about overzealous enforcement and burdensome rules. Many people see OSHA as an agency so enmeshed in its own red tape that it has lost sight of its own mission. And too often, a "one-size-fits-all" regulatory approach has treated conscientious employers no differently from those who put workers needlessly at risk.

Confronted by these two realities, in its next 25 years, OSHA must simultaneously do two things: **Increase** the protection of worker health and safety and, at the same time, **decrease** red tape and paperwork. To do this, OSHA is committed to a reform of the way it does business, so that it can keep pace with the workforce and problems of the future. Above all else, the new OSHA will seek to ensure that safety is promoted and protected by those in the workplaces themselves—managers and workers at the worksite.

To this end, the Clinton Administration announces three sets of regulatory reform initiatives to enhance safety, trim paperwork, and transform OSHA.

---

■ **The New OSHA:** OSHA will change its fundamental operating paradigm from one of command and control to one that provides employers a real choice between partnership and a traditional enforcement relationship.

■ **Common Sense Regulation:** OSHA will change its approach to regulations by identifying clear and sensible priorities, focusing on key building block rules, eliminating or fixing out-of-date and confusing standards, and emphasizing interaction with business and labor in the development of rules.

■ **Results, Not Red Tape:** OSHA will change the way it works on a day-to-day basis by focusing on the most serious hazards and the most dangerous workplaces and by insisting on results instead of red tape.

---

OSHA is **not** changing direction because it has changed its ultimate destination, but to reach its destination in a better way. That destination—an America whose workplaces, as far as possible, are free from hazards that cause or are likely to cause death or physical harm—must be kept in sight at all times. And employers who neglect safety and endanger their workers will continue to face strict, vigorous enforcement. Regulatory reform that endangers the lives of workers is no reform at all.

---

<sup>5</sup>National Safety Council, *Accident Facts* (Itasca, IL, 1994), p. 35.

The regulatory reform initiatives that follow (**The New OSHA and Common Sense Regulation**) and OSHA's commitment to fundamental organizational changes (**Results, Not Red Tape**) are the tools to address these national safety and health problems.<sup>6</sup> Appendix A of this report contains OSHA's six principles for implementing the initiatives, and Appendix B briefly describes each initiative.

## **The New OSHA: Partnership or Strong, Traditional Enforcement**

Not all workplaces are alike; not all employers are equally responsible. Yet too often, today's regulatory scheme applies a "one-size-fits-all" approach that treats all workplaces and all hazards equally. In the most significant reform unveiled in this report, OSHA will take steps to treat employers who have aggressive health and safety programs differently from employers who lack such efforts. In effect, employers will be offered a choice of how they will be regulated by OSHA. This approach has the potential to dramatically increase safety and ease the adversarial relationship between regulators and business, by putting primary responsibility for ensuring safety in the hands of managers and workers at worksites across the country.

At its core, this new approach seeks to encourage the development of worksite health and safety programs. In a health and safety program, employers and employees work together to find the best solutions to the particular problems of their workplace. OSHA will be looking for programs with these features: management commitment, meaningful participation of employees, a systematic effort to find safety and health hazards whether or not they are covered by existing standards, documentation that the identified hazards are fixed, training for employees and supervisors, and ultimately a reduction in injuries and illnesses.

To spur the spread of these programs, employers will be offered a clear choice:

**For firms with strong and effective health and safety programs: partnership.** OSHA recognizes that many, if not most, employers are interested in protecting the safety of their workers. Those who choose to work with their employees and with OSHA in reducing injuries and illnesses will find OSHA to be a willing partner. For fully committed employers who are truly exceptional in eliminating hazards and reducing injuries and illnesses, OSHA will provide special recognition including the lowest priority for enforcement inspections (which, given remaining priorities, means that inspections will be quite rare); and the highest priority for assistance, appropriate regulatory relief, and penalty reductions of up to 100 percent. For those firms that are well intentioned but have room for improvement, OSHA will offer a sliding scale of incentives depending upon the degree to which the employer demonstrates real efforts to find and fix hazards.

---

<sup>6</sup> It should be noted that the OSHA program is delivered in 40 percent of the nation's workplaces by the 25 states that operate OSHA-approved plans. As OSHA's partners, the states will continue to be actively involved in the "change" process. The states will be encouraged to adopt similar policies but also may choose to experiment with other alternatives.

**For firms that do not implement strong and effective health and safety programs: traditional OSHA enforcement.** In contrast, firms that do not step up their efforts to ensure safety in the workplace will continue to face strong and traditional OSHA enforcement procedures. (In time, the spread of health and safety programs will allow OSHA to devote greater enforcement resources to these firms.) In short, for those who have a history of endangering their employees and are unwilling to change, OSHA will rigorously enforce the law without compromise to ensure that there are serious consequences for serious violators.

Some of the initiatives underway in this new partnership approach are identified briefly in the following paragraphs as well as in Appendix B.

#### *Nationalize the "Maine 200" Concept*

OSHA's Maine 200 program offers a real choice for employers who seriously want to work with OSHA to reduce injuries and illnesses. In the Maine 200 program, instituted in 1993, the 200 Maine companies with the highest number of injuries were offered a choice: Work in partnership to improve safety or face stepped-up enforcement. (All but two firms chose partnership.) The firms received assistance in developing strong health and safety programs. At the same time, they were given the lowest priority for inspection (in other words, inspections generally occurred only if there were complaints about serious accidents). The key to success is encouraging employers to work with their employees in hazard identification and safety awareness, rather than have those workers depend solely on OSHA inspectors.

The Maine program is extremely promising. In two years, the employers self-identified more than 14 times as many hazards as could have been cited by OSHA inspectors (in part, because OSHA's small staff could never have visited all 1,300 worksites involved). Nearly six out of ten employers in the program have already reduced their injury and illness rates, even as inspections and fines are significantly diminished.

OSHA will expand the most successful features of this program nationwide. These successful elements include using worksite-specific data to help identify high-hazard workplaces, providing information to employers about effective safety and health programs, offering employers a choice in how they want to work with OSHA, ensuring management commitment and worker involvement, and modifying enforcement policies for high-performance employers.

#### *Focused Inspections for Employers with Strong and Effective Safety and Health Programs*

Construction is a high-hazard industry. Yet here, too, a strong health and safety program can protect workers without unduly burdensome federal inspections. Where OSHA finds an effective program operating onsite, the agency conducts an inspection limited to the top four hazards that kill workers in the construction industry—falls from heights, electrocution, crushing injuries (e.g., trench cave-ins), and being struck by material or equipment. If these hazards are well controlled, the inspector closes the inspection promptly and leaves the site. Conversely, where a safety and health program has not been established or is ineffective, OSHA conducts a complete site inspection with full citations.

OSHA will be expanding the focused inspection concept to other employment sectors and will work with targeted industries—chosen based on their injury and illness rates and other data—to (1) encourage the adoption of effective safety and health programs and (2) identify the most serious hazards in those industries for focused attention during inspections. Development of recommendations for the Assistant Secretary will be made by the Enforcement/Litigation Strategy Standing Committee in July with implementation of a focused inspection program in selected industry sectors targeted for August 1995.

#### *Incentives for Employers with Safety and Health Programs*

To encourage employers to reduce death and injury by implementing safety and health programs on a continuing basis, OSHA will grant an array of penalty adjustments based on the vigor and effectiveness of the program.

If, for example, OSHA finds, during the course of a workplace inspection, that an employer has implemented a superior safety and health program, it will grant large reductions—up to 100 percent—in the penalties that would otherwise be assessed for violations found. For employers who have less effective programs in place but are making good-faith efforts, OSHA will grant a sliding scale of incentives. To qualify, the employer's program must include each of the recognized elements of a good safety and health program, which must be effective in practice and not just on paper. As evidence of a program's effectiveness, OSHA will expect to find that the workplace has a low injury and illness rate, that the employer has in fact found and fixed most hazards, that the workplace has not been cited in the past three years for the gravest types of violations, that the inspection was not prompted by an employee fatality or catastrophic accident, that any violations found in the current inspection are comparatively minor, and that the employer is prepared to correct any violations found.

#### *Employee Participation in Safety and Health Efforts*

OSHA will promote worker participation in efforts to achieve safe and healthful workplaces. Employers have an obvious interest in working with their employees to improve safety and health at their own establishments. Workers possess a keen awareness of hazards to which they are exposed. Many workplaces have tapped into this important resource and achieved successful results with innovative approaches that involve safety and health programs and cooperative efforts between management and workers.

### **Common Sense Regulation**

A second set of initiatives seeks to streamline and rationalize the body of regulations on OSHA's books. Such reform will provide needed clarity for employers and workers. For example, to this day many of OSHA's rules date from voluntary industry standards that were adopted wholesale at the time the agency was created in 1970—ironically, many of the standards that today are most criticized for complexity and verbosity. OSHA has already used focus group methods to assess problems with the readability and format of its rules and will continue to improve in this area.



To develop standards that make sense, OSHA has established a four-point regulatory strategy: identify clear and sensible priorities, focus on key building block rules, eliminate or fix out-of-date or confusing standards, and emphasize interaction with business and labor in the development of rules.

### *Priority Planning Process*

OSHA has been working together with more than 200 stakeholders in business, labor, professional associations, and state government to identify the most pressing new priorities for agency action. Some of these will be scheduled for rulemaking, but the majority will be addressed through workplans developed following consultations with labor and industry. Some of the issues suggested for priority attention include occupational asthma, reproductive hazards, metalworking fluids, asphalt fumes, commercial diving, welding hazards, workplace violence, and motor vehicle accidents.

### *A Logical Framework of Basic Building Blocks*

OSHA is working together with business and labor to develop an approach for employer safety and health programs that will establish provisions for finding and fixing workplace hazards to reduce injuries and illnesses on the job. For the first time, this will provide employers who want to understand and comply with OSHA regulations a clear starting place and a roadmap through the rest of the rules. It will be a flexible, performance-based approach developed through partnership with business and labor. It will, however, be sufficiently specific so that employers will understand OSHA's basic expectations and will know how to meet them.

Some of the basic building blocks are now scattered throughout many standards in an uncoordinated fashion and need to be consolidated. Among these are training programs, maintenance of records, monitoring of risk exposure, and medical surveillance. In addition to consolidating such provisions in its safety and health program, OSHA will undertake a general consolidation of duplicative elements across current standards.

### *Improve, Update, and Eliminate Confusing and Out-of-Date Standards*

At the direction of the President, OSHA is in the process of reviewing all of its 695 separate rules to identify those that need to be revoked or revised because they are obsolete, confusing, inconsistent, or duplicative. Although the full report will be not be ready until June 1995, several promising actions can be announced at this time.

***Repair of Problem Rules:*** OSHA will act to fix numerous regulatory provisions that are most obviously in need of repair and can be handled quickly. For example:

- Today, plastic gas cans are allowed in manufacturing work sites but are not allowed on construction sites, even if they have been approved by local fire marshals.



- OSHA allows only radiation signs with purple letters on a yellow background, while the Department of Transportation allows only those that are black on yellow.
- OSHA needlessly requires that worksite first-aid kits be approved by a physician.

As part of its effort to bring common sense to its rulemaking activities, OSHA also will review its standards to determine which should be rewritten in plain English. OSHA also will maximize use of performance standards that set outcome goals for regulated workplaces and minimize the use of design standards that mandate the process by which employers must meet their obligations.

The following three initiatives focus on increasing interaction with business and labor in addressing challenging workplace health and safety issues:

#### *Hazard Communication and the Right to Know*

OSHA will request its National Advisory Committee on Safety and Health to convene a working group to identify ways to improve hazard communication in the workplace. The committee will be asked to provide OSHA with recommendations in six months that will enable OSHA to focus on the most serious hazards, to simplify material safety data sheets, to reduce the amount of required paperwork, and to improve the effectiveness of worker training.

#### *New Approaches to New Hazards*

Work-related musculoskeletal disorders—such as tendinitis, carpal tunnel syndrome, and low back pain—are leading causes of suffering and disability in the workplace today. The average cost to business is \$29,000 per musculoskeletal disorder. The number of ergonomically related disorders is increasing dramatically: Six out of ten new occupational illnesses reported to the Bureau of Labor Statistics in 1992 were disorders associated with repeated trauma. Ergonomics, the science of designing jobs to fit people, provides tools to address these problems.

Once, OSHA might have promulgated a detailed, lengthy specification standard to address ergonomics, resulting in rigid and inflexible requirements. Today, using a new "common sense" approach, OSHA instead is seeking to address the issues of ergonomics by working with business and labor on ergonomics initiatives, including training and education, technical assistance, and regulatory approaches. OSHA's effort will reward high-performance employers, support employers requesting assistance, and address employers who fail to keep workplaces free of recognized and serious ergonomically related hazards.

### *OSHA's Involvement in Non-Traditional Sectors*

It makes sense for OSHA to pay most attention to the places where most people are working. The rapidly growing service sector poses new safety and health challenges for industry, labor, and government. For example, the Bureau of Labor Statistics reported that, in 1993, six of the ten industries with the largest numbers of workplace injuries were in the service sector. Employees in health care, fast food, temporary service companies, and automobile repair facilities experience injury and illness rates equaling or exceeding those in high-hazard manufacturing industries such as steel, textiles, and paper. OSHA intends to work strategically with industry and labor leaders to develop cooperative programs, collaborative training and education, focused enforcement, and meaningful regulatory approaches to address these problems.

### **Common Sense Enforcement: Results, Not Red Tape**

Equally as important as the content of the rules OSHA enforces is the way it enforces them—the way that the agency's 900 inspectors and other employees do their business. While maintaining its commitment to worker safety, OSHA is developing new ways to meet those goals that result in less red tape and more flexibility in dealing with those in the private sector. These changes are occurring throughout OSHA on a number of fronts.

In the past, OSHA inspectors were measured not on the basis of safety at the workplace, but on the basis of violations found. OSHA cited employers not only for genuine safety hazards, but also for minor or paperwork violations. In the past two years, the agency has sought to inject some simple common sense into the enforcement process:

- Citations for violations of paperwork requirements are declining.
- OSHA inspectors no longer penalize employers who have not put up the required OSHA poster if the employer agrees to post it right away.
- OSHA has issued new inspection guidelines that will better assure that employers are not fined for failure to have a material safety data sheet for a common consumer product that is used as it would be used in the home.
- OSHA inspectors have been told clearly that there are no numeric inspection goals and that their performance will not be judged by the number of citations and fines they issue but by their success in finding and reducing hazards associated with injuries and illnesses.

This transformation in the agency's organizational culture must accelerate. To this end, OSHA's management and employees are working with outside management consultants to continue the process of change, so that in years to come, the agency's employees feel

empowered to use judgment and common sense to protect workers. In addition, OSHA is launching several reinvention initiatives designed to inject common sense in the way OSHA front-line workers interact with both the private sector and the states.

#### *Field Office Redesign—Getting Results and Improving Performance (GRIP)*

OSHA understands that real change will result only from reinventing the way its own staff performs. OSHA is redesigning the structure and operation of its area offices to provide better public service and to increase its ability to reduce injuries, illnesses, and deaths in the workplace. A team of agency workers and managers has developed a model area office that is now being tested in seven pilot offices and will soon be expanded to all of OSHA's 67 area offices—at the rate of five offices every quarter.

The model redesign has four main components: (1) using problem-solving techniques and data analysis to identify and address the leading causes of death, injury, and illness; (2) using technologies such as computers and video cameras to streamline work processes; (3) organizing the staff into specialized Response Teams that will respond to requests for agency services and Strategic Intervention Teams that will target agency initiatives and problem-solving strategies; and (4) evaluating performance on the basis of data and actual results achieved, not just the number of agency activities.

#### *Strengthen OSHA's Partnership with State Programs*

OSHA will establish a new relationship with its state plan partners, encouraging them to experiment with innovative ways to prevent injuries and illnesses. Instead of monitoring the states by comparing federal and state activities, OSHA will assess results in each state and will encourage innovations by states that increase the effectiveness of their programs in ways that may differ from the federal practice if they are as likely to reduce injuries and illnesses.

#### *"Quick Fix": Incentives for Fixing Hazards Quickly*

Today, after an OSHA inspector finds a violation, the employer can contest the citation for months, resulting in cost and confrontation—and no increased safety. As an incentive to abate hazards immediately, OSHA has successfully experimented with a "quick-fix" program. Using this model, compliance officers reduce penalties for violations that are abated during the inspection. This policy encourages employers to increase employee protection immediately, while freeing OSHA employees from monitoring abatement and follow-up paperwork.

#### *Improvements in Inspection Targeting System*

OSHA will improve the system it uses to identify and target agency inspections to those employers who have serious workplace problems and refuse to correct them. OSHA's current industry-based targeting system treats all employers in an industry group alike, regardless of their individual safety and health performance. In every industry, however, some workplaces

are more hazardous than others, and it is these unsafe worksites that should be targeted for strong inspection. Relying on data that the agency will begin collecting in Fiscal Year 1995 from a variety of internal and external sources, including data from state workers' compensation agencies, the agency will focus its enforcement activities on employers with unusually high rates of workplace injury and illness and a record of serious and repeated OSHA violations. This will vastly improve OSHA's ability to focus its resources on employers who ignore safety and health rules and put their employees at risk.

### *Compliance Assistance Through Information Technology*

The agency has implemented a number of information-dissemination projects and plans to undertake new initiatives to improve the availability of safety and health data to the public through a variety of electronic means. These actions are needed in response to an increasing demand for safety and health information from employers, employees, and others who are attempting to provide working men and women with safe and healthful workplaces. OSHA recognizes that an informed safety and health community is better able to recognize and protect itself from workplace hazards.

To address this need, OSHA introduced in 1992 the OSHA CD-ROM, which provides in one convenient format a wealth of information about occupational safety and health and OSHA regulations. This CD-ROM has been one of the top-selling items offered by the Government Printing Office. OSHA also will encourage more public involvement and input in the regulatory process by routinely disseminating the text of proposed and final standards through the OSHA CD-ROM and the Department of Labor Electronic Bulletin Board. To promote public awareness and analysis of OSHA's enforcement activities, OSHA is compiling its 20 years of enforcement data on a two-disk CD-ROM set. To promote easy public access to OSHA standards and interpretations, OSHA is developing, in coordination with the Environmental Protection Agency, the OSHA System for Compliance Assistance and Referral (OSCAR). To provide special assistance to small businesses, OSHA also is working with the National Performance Review to provide electronic access to regulatory information and services through the Internet.

### *Measuring OSHA's Performance*

To help the agency accurately gauge the success of its endeavors, OSHA is developing a comprehensive performance measurement system that will shift the focus from tracking activities to monitoring results. In the past, OSHA used enforcement statistics, such as the number of inspections, to assess its effectiveness, even though these numbers do not directly relate to OSHA's goal of reducing fatalities, injuries, and illnesses. Under the revised system, which will be phased in over the next several years, OSHA will have information that will improve the agency's ability to quantify its successes, identify the most efficient and effective program mix, and promote the development of programs and policies based on solid, objective information.

## APPENDIX A

## OSHA'S PRINCIPLES FOR PROTECTING AMERICA'S WORKERS

1. OSHA's purpose is to save lives, prevent workplace injuries and illnesses, and protect the health of all America's workers. This includes efforts to protect groups of workers who are small and unorganized but who are particularly vulnerable or who face special hazards.
2. Whenever possible, OSHA will seek and expect implementation of hazard control strategies based upon primary prevention (i.e., strategies which focus on fixing the underlying causes of problems and reducing hazardous exposures at their source).
3. OSHA will initiate strategic, public-private partnerships to identify and encourage the spread of industry best practices to solve national problems.
4. Employer commitment and meaningful employee participation and involvement in safety and health is a key ingredient in effective programs.
5. All safety and health services, resources, rules, and information must be readily accessible and understandable to employees, employers, and OSHA's staff.
6. OSHA intends to be a performance-oriented, data-driven organization that places the highest premium on real results rather than activities and processes. OSHA's programs must be judged according to their success at eliminating hazards and reducing injuries and illnesses.



## APPENDIX B

## BRIEF DESCRIPTIONS OF OSHA INITIATIVES

## 1. Nationalize the "Maine 200" Concept

**Action:** OSHA will implement programs nationwide based on the "Maine 200" concept.

**Background:** In 1993, OSHA tried a new workplace safety and health program in the State of Maine. Using employer-specific data, OSHA found the 200 employers with Maine's highest number of workplace injuries and illnesses. The 200 companies represented only 1 percent of the state's employers and 30 percent of Maine's workers, but accounted for 45 percent of Maine's workers' compensation injuries and illnesses.

OSHA gave each employer the choice of participating in a new program or sticking with the traditional enforcement approach. OSHA asked each employer to develop a comprehensive safety and health program to fix the hazards that were causing injuries and illnesses at their workplaces. If employers chose to join in a partnership with OSHA to develop an effective program (as 98 percent did), they were given a significantly lower priority for inspection and a high priority for technical assistance. These programs had to include management commitment and employee involvement, worksite analysis, hazard prevention and control, and worker training. Their performance is being monitored through regular reporting and random inspections.

OSHA evaluation shows that, in two years, employers in the program have identified more than 95,000 instances of hazards—more than 14 times as many hazards as could have been cited by OSHA inspectors (in part, because OSHA's small staff could never have visited all 1,300 worksites involved). Since joining the program, six out of ten of the employers have already experienced a decrease in their lost-time injury rate. Workers' compensation claims—and insurance premiums—are now decreasing. The key to the success of the "Maine 200" program is that it encourages hazard identification and safety awareness by employers and workers, rather than having those workers depend on OSHA compliance officers.

**Description:** Several of OSHA's field offices have programs like "Maine 200" at different stages of development. Under such programs, OSHA will screen workplace-specific injury and illness data for many employers. OSHA's local offices will use these data and other locally based information to identify serious workplace hazards. OSHA staff will offer employers incentives to abate hazards and to tailor comprehensive safety and health programs to their workplaces. OSHA will work actively with these companies to help them develop good programs. Employers who accept OSHA's offer will receive consultation, outreach, and technical assistance services. Employers who choose not to participate will be subject to traditional OSHA enforcement.

This approach represents a bold change of direction for OSHA. The "Maine 200" concept combines into one integrated program workplace-specific injury and illness information, partnership between OSHA and industry, involvement of workers, enforcement and non-enforcement options, and an emphasis on the development of effective safety and health programs. OSHA will ensure safer and more healthful workplaces for more workers by leveraging its resources with a larger number of workplaces in a wider range of industries.

**Implementation Plan:** In 1995, OSHA has tested several variations on "Maine 200" in states where worksite-specific injury and illness data are available from state workers' compensation systems. OSHA plans to have programs in nine other states by the end of the year. Programs have already been initiated in Wisconsin and Missouri. Programs also are being developed in OSHA field offices in Atlanta, Georgia, and Parsippany, New Jersey. In these other states, OSHA will use a combination of the Maine and Wisconsin programs, using both the number of workers' compensation claims and injury/illness rates to identify hazardous workplaces. In 1996, OSHA will implement the Maine concept nationally by collecting data directly from employers and providing it to OSHA staff in its redesigned area offices to solve local workplace safety and health problems.

## **2. Focused Inspections for Employers with Strong and Effective Safety and Health Programs**

**Action:** OSHA will expand programs that focus on identifying and eliminating the most serious workplace hazards and that prove effective in reducing worker deaths, injuries, and illnesses. This will include the expansion of programs like "Focused Inspections in Construction" to other industries and locally developed programs that target area-specific safety and health problems.

**Background:** In 1994, OSHA began a program for inspecting construction sites that encourages contractors to implement comprehensive safety and health programs. Where OSHA compliance officers found an effective program onsite, OSHA conducted an abbreviated inspection. This inspection was limited to the top four hazards that kill workers in the construction industry: falls from heights, electrocution, crushing injuries (e.g., trench cave-ins), and being struck by material or equipment. Conversely, where a safety and health program did not exist or was ineffective, OSHA conducted a complete site inspection. This focused inspection program has received positive reaction from both the construction industry employers and labor unions.

**Description:** OSHA will expand its "Focused Inspections" to target the hazards directly related to the injury and illness experience of employment sectors other than construction. These programs will promote the positive effect of occupational safety and health programs by demonstrating the link between effective programs and accident reduction.

Industries will be chosen for emphasis on either a national or regional basis, based on their accident and illness rates and other data. OSHA will work with the targeted industries, primarily at the local level, to (1) identify the most serious hazards in those industries for focused attention during inspections and (2) encourage the adoption of effective safety and health programs. Where effective programs are in place, OSHA will focus its inspection activity on those hazards identified as most serious.

**Implementation Plan:** OSHA's Enforcement/Litigation Strategy Standing Committee will make specific recommendations on focused inspections in general industry in July 1995. A focused inspection program in selected industry sectors will kick off in August 1995.

### 3. Incentives for Employers with Safety and Health Programs

**Action:** Recognize employers who have demonstrated a high level of effective self-enforcement of safety and health requirements by providing significant reductions—up to 100 percent—in penalties for violations.

**Background:** Effective safety and health programs have been shown to be the key to reducing workplace injuries and illnesses. OSHA's current penalty policy provides for very high penalties for the worst violations, those characterized as "egregious willful." OSHA believes that its penalty policy should also recognize those employers who have demonstrated a high level of commitment to safety and health for their employees by implementing an effective onsite safety and health program.

**Description:** If OSHA determines, during the course of a workplace inspection, that an employer has implemented a superior safety and health program, it will grant large reductions in the penalties that would otherwise be assessed for any violations found. Penalties will be eliminated entirely for violations that do not involve significant safety or health threats to workers, and citations will not be issued for such violations if corrected during the course of the inspection. For employers who have less effective programs in place but are making good faith efforts, OSHA will grant a sliding scale of incentives.

The qualifying employer's program must include each of the recognized elements of an effective safety and health program: management commitment, meaningful employee involvement in the development and implementation of the program, worker and supervisor training, diligent efforts to identify potential hazards in the workplace, and effective measures to prevent or control such hazards. The program must be effective in practice and not just on paper. As evidence of the program's effectiveness, OSHA will expect to find that the workplace has a verifiable low injury and illness rate; that the workplace has not been cited in the past three years for the gravest types of violations (willful, repeated, failure to abate, or high gravity serious violations); that there is documentation of on-going efforts to identify and correct hazards in a timely fashion; that the inspection was not prompted by an employee fatality or catastrophic accident; that any violations found in the current inspection are comparatively minor, considering the size and activities of the workplace, and do not include the gravest types of violations; and that the employer is prepared to correct any violations found.

**Implementation Plan:** OSHA will implement the policy by September 1, 1995. OSHA compliance personnel will receive training in identifying and supporting safety and health programs prior to implementation.

#### 4. Employee Participation in Safety and Health Efforts

**Action:** OSHA will promote strategies to enhance worker participation in activities where workers are partners in efforts to achieve safe and healthful workplaces.

**Background:** Employees have an obvious interest in working with their employers to improve safety and health at their own establishments, since their very lives and livelihoods are at stake. Moreover, workers possess a keen awareness of the many hazards to which they are exposed during the course of their operations. Many workplaces have tapped into this important resource and have achieved successful results with innovative approaches that involve safety and health programs and cooperative efforts between management and labor.

**Description:**

**Increased Awareness.** OSHA will promote the need for increased employee participation in safety and health activities. OSHA will work to ensure that employees are afforded an opportunity to participate in agency inspections and informal conferences.

**Consultation.** OSHA will work with states that provide consultation services to enhance worker participation. For example, OSHA will assure that employees are provided copies of consultation reports and are included on consultation walkarounds.

**Anti-Discrimination.** OSHA will work to improve its anti-discrimination protection. Without it, some employees will not participate in safety and health activities because of the potential for retaliatory action by their employer.

**Implementation Plan:** OSHA will develop a strategy for promoting employee participation by October 1995.



## 5. Priority Planning Process

**Action:** Working together with stakeholders, OSHA has undertaken a systematic effort to identify about 20 of the leading causes of workplace injury, illness, and death as high-priority hazards for focused attention and coordinated action. Some of these will be scheduled for rulemaking, but the majority will be addressed through workplans developed following consultation with labor and industry. OSHA and its stakeholders will undertake national campaigns to reduce worker exposure to these important dangers.

**Description:** Beginning in August 1994, OSHA—together with the National Institute for Occupational Safety and Health, the Environmental Protection Agency, the Mine Safety and Health Administration, and other DOL agencies—solicited input from stakeholders about the most critical workplace hazards deserving national attention. Through mailings, a *Federal Register* notice, and a series of scoping meetings, OSHA received more than 100 written comments and the direct participation of nearly 200 representatives of labor, industry, professional, and academic organizations, state government, and the general public. OSHA and its Priority Planning Committee also received recommendations from the National Advisory Committee on Occupational Safety and Health and the Advisory Committee on Construction Safety and Health.

There were more than 200 suggestions for top workplace hazards affecting millions of workers in a wide variety of industries. A set of decision criteria was used to guide the review including: seriousness of the hazard, number of workers exposed or magnitude of risk, quality of available information, potential for risk reduction, feasibility and other public policy considerations (i.e., intensity of public concern). OSHA expects to identify approximately 20 hazards for priority action through a combination of rulemaking and non-rulemaking actions.

Although final priorities have not been selected, some of the leading candidates still under consideration include workplace violence, occupational asthma, reproductive hazards, metalworking fluids, asphalt fumes, commercial diving, welding hazards, motor vehicle accidents, crystalline silica, oil and gas well drilling, synthetic mineral fibers, solvents, diesel exhaust, hazardous medications, and crane safety. OSHA will convene work groups together with business and labor to establish action plans for each of the final priorities.

In addition to comments about specific hazards, during the priority discussions, two general themes were expressed clearly and consistently by representatives of business, labor, state government, and the professional community. First, OSHA was cautioned not to let new priorities deflect attention and resources away from critical activities already in progress, particularly promotion of safety and health programs, recordkeeping simplification, and addressing ergonomics issues, all of which were considered essential building blocks for future agency activity. Second, OSHA was urged repeatedly not to overload its regulatory calendar with numerous new rulemaking initiatives, but rather to use a variety of creative, non-rulemaking tools to stimulate the private sector to reduce worker exposures to many of the priority hazards.

**Implementation Plan:** Action Plans for at least six of the priority issues will be completed by the end of Fiscal Year 1995.

## 6. Building Blocks and Out-of-Date Standards

**Action:** To develop standards that make real sense to real people, OSHA will focus on key building block rules and eliminate or fix out-of-date or confusing standards.

**Description:** "A Logical Framework of Basic Building Blocks." OSHA is working together with business and labor to develop an approach for employer safety and health programs that will set minimum requirements for finding and fixing workplace hazards to reduce injuries and illnesses on the job and supplement specific rules governing specific hazards. For the first time, OSHA will provide employers who want to understand and comply with OSHA regulations a clear starting place and a roadmap. It will be a flexible, performance-based approach developed through partnership with business and labor. Requirements, however, will be sufficiently specific so that employers will understand OSHA's basic expectations and will know how to meet them.

For instance, the basic building blocks of a comprehensive safety and health program include hazard identification and exposure assessment, hazard control and abatement, training and education, accident investigation and emergency response, medical screening and surveillance, employee participation, and recordkeeping. Some of these building blocks of comprehensive safety and health programs are now scattered throughout many standards in an uncoordinated and inconsistent fashion and need to be consolidated, particularly the requirements for training, maintenance of records, and medical surveillance. In addition to consolidating such provisions in its safety and health program, OSHA will undertake a general consolidation of duplicative elements across current standards.

This high-priority initiative can only be successfully accomplished if OSHA works in a collaborative manner with business and labor to find maximum consensus where possible. OSHA hopes to benefit from a facilitation center which is currently assessing the possibility of a systematic dialogue to explore fully the issues of greatest concern to all the stakeholders.

**Description:** "Improve, Update, and Eliminate Confusing and Out-of-Date Standards." At the request of the President, OSHA is in the process of reviewing all of its 695 separate rules to identify those that need to be revoked or revised because they are obsolete, confusing, inconsistent or duplicative. While the full report will not be ready until June 1, 1995, several promising actions can be announced at this time.

**Repair of Problem Rules:** OSHA will act to fix numerous regulatory provisions that are most obviously in need of repair and can be handled relatively quickly. For example, plastic gas cans are allowed in manufacturing worksites but are not allowed on construction sites, even if they have been approved by local fire marshals. OSHA only allows radiation signs with purple letters on a yellow background, whereas the Department of Transportation only allows those that are black on yellow. OSHA requires that worksite first-aid kits be approved by a physician. OSHA requires posting of an emergency phone number even in areas where the well known 911 service is well established. Certain medical requirements for coke oven workers are outdated and probably unnecessary.

**Implementation Plan:** OSHA will proceed immediately to work with stakeholders on development of the building block rules. OSHA will identify out-of-date, duplicative, and problem standards by June 1, 1995, and will publish a *Federal Register* notice seeking public input on changes within six months.

## 7. Hazard Communications and the Right to Know

**Action:** OSHA will immediately request that the National Advisory Committee on Occupational Safety and Health (NACOSH) establish a working group on Hazard Communication and the right to know.

**Description:** OSHA's Hazard Communication Standard, promulgated in 1983 and revised in 1994, was developed to ensure that workers who are potentially exposed to toxic substances are provided useful information about the dangers of these substances and about protective measures needed to work safely with the substances. The standard, as intended, has resulted in a large increase in awareness among employers and employees about workplace hazard recognition and control. It has stimulated training programs, labeling efforts, engineering controls of chemical exposures, and appropriate use of personal protective equipment. The standard, however, also has received substantial criticism, including that Material Safety Data Sheets are too long, too technical, and too confusing; that enforcement of the standard has focused too heavily on paperwork and minor violations, particularly with regard to relatively low hazard materials such as common consumer products; that the standard requires too much paperwork; and that there has been too little compliance assistance and technical support to employers for this type of performance based standard.

Although some of these criticisms of the rule are exaggerated, OSHA will request that NACOSH convene a working group to identify ways to improve hazard communication in the workplace. OSHA will ask the committee to provide recommendations in six months to simplify Material Safety Data Sheets, reduce the amount of required paperwork, improve the effectiveness of worker training, and revise enforcement policies to focus on the most serious hazards. In particular, the working group will be asked to consider the possibility of amending the present rule to allow employers to meet their obligation under the standard to provide employees with material safety data sheets if they can obtain and provide these sheets within 24 hours or immediately in an emergency. This would relieve employers of the burden of keeping voluminous books of data sheets on hand at all times.

**Implementation Plan:** OSHA will immediately request NACOSH to establish a working group on hazard communication and the right to know.

## 8. New Approaches to New Hazards

**Action:** Address public concerns about ergonomically related hazards in the workplace through a common sense strategy of consultation, training and education, labor and industry partnerships, regulatory approaches, and sensible enforcement/litigation strategy.

**Background:** The number of musculoskeletal disorders is increasing dramatically as evidenced by the fact that 63 percent of new occupational illnesses reported to the Bureau of Labor Statistics in 1993 were disorders associated with repeated trauma. The estimated average cost to business is \$29,000 per musculoskeletal disorder. The estimated direct workers' compensation cost for such disorders is \$20 billion annually. Very simply, ergonomics is job design with the worker in mind. Ergonomics identifies and controls risk factors that cause musculoskeletal disorders such as low back pain, carpal tunnel syndrome, and tendinitis. Some employers have voluntarily implemented successful programs to control problems. Their experience demonstrates that reducing exposure to risk factors decreases the chances of developing musculoskeletal disorders. Early identification and treatment of disorders can reduce the severity and decrease disability.

**Description:** Once, OSHA might have promulgated a detailed, lengthy specification standard to address ergonomics, resulting in rigid and inflexible requirements. Today, in cooperation with business and labor, OSHA will build and implement a sensible and versatile strategy for the control of work-related musculoskeletal disorders. This effort will reward exemplary employers, recognize employers requesting assistance, and address employers who fail to keep workplaces free of recognized and serious ergonomically related hazards. Among other methods, this effort will spotlight those participants in OSHA's Voluntary Protection Program with exemplary ergonomic programs and emphasize their successful approaches. OSHA consultation programs in every state will promote ergonomic cooperative programs that include outreach and program development assistance. A training and education effort including grants, seminars, and materials will be coordinated with labor and industry groups. An enforcement and litigation strategy that uses the range of enforcement interventions from nonformal resolution to flexible settlement, to strong enforcement will be designed to leverage OSHA's limited resources to focus on the most hazardous workplaces.

**Implementation:** Schedule and conduct meetings with OSHA stakeholders by September 30, 1995. Develop and design a comprehensive program by December 31, 1995.



## 9. OSHA's Involvement in Non-Traditional Sectors

**Action:** To establish OSHA's involvement in industry sectors where OSHA has had minimal presence in the past but where there is an emerging safety and health need, such as in the service sector.

**Background:** In recent years, service industries have experienced an explosive growth in this country, creating new safety and health challenges for industry, labor, and government. Whereas in the past, OSHA concentrated its scarce resources on more traditional workplaces (e.g., manufacturing and construction) and traditional hazards (e.g., machine guarding, fall hazards), OSHA must now direct some of its energies and resources to meet these emerging challenges. Service sector employees in health care, fast food, and automobile repair facilities experience injury and illness rates equaling or exceeding those in high-hazard manufacturing industries such as steel, textiles, and paper. In addition, due to the lack of OSHA's presence in these sectors, employers and employees may be less familiar with safety and health issues, the nature of the hazards they encounter, and necessary preventive measures.

**Description:** OSHA will design a multi-faceted Service Sector Program to target resources to enhance worker protection in the most hazardous service sectors of the economy. The multi-faceted program will include (1) developing partnerships with professional and trade associations and labor unions to highlight service sector safety and health issues and provide training for workers, (2) recognizing model facilities/programs through the agency's Voluntary Protection Programs (VPP) to demonstrate effective service sector safety and health programs, (3) providing technical assistance through the agency's consultation programs to assist small business, and (4) focusing enforcement efforts through agency national and special emphasis programs to emphasize OSHA's commitment to service sector workers.

**Implementation Plan:** Develop the design for a coordinated service sector program, including program impact measures, by December 31, 1995, and schedule meetings with OSHA partners for discussions and specific input.

## 10. Field Office Redesign - Getting Results and Improving Performance (GRIP)

**Action:** OSHA will reengineer the structure and operation of its field offices to serve its customers better and increase its ability to reduce injuries, illnesses, and deaths in the workplace.

**Background:** OSHA recognizes that in these times of government accountability and increasing fiscal restraint it must bring change to OSHA's front line. Accordingly, a team of agency workers and managers developed a model area office to serve as a prototype for OSHA's 66 area offices.

**Description:** The goal of the redesign is to make OSHA's field offices both responsive to the public and innovative in finding effective approaches to improve workplace safety and health. The model redesign has four main components:

(1) **Strategy.** Area offices will use problem-solving techniques to develop specific plans that address the leading causes of death, injury and illness within their jurisdiction. Plans will include a variety of proactive interactions with employers (not just inspections), and area office staff will be expected to identify opportunities to work with employers to make their worksites safer and more healthful. Area office staff will form partnerships with state and local governments, insurance companies, employers and employees, labor unions, and other groups and individuals who are concerned about workplace safety and health. A key element in OSHA's strategic approach is the use of injury, illness, and fatality data to focus the agency's efforts on the worst hazards, workplaces, and industries. The strategy also calls for the use of various types of interventions—training, outreach, and technical assistance, not just inspections—to encourage compliance. Moreover, the agency will form partnerships with other various government and private sector organizations to promote safety and health in a cooperative manner.

(2) **Process.** OSHA field offices will become more efficient by changing their processes and procedures and by increasing their use of technologies such as computers and video cameras to streamline work processes. This will release staff time for more direct work with agency customers.

(3) **Organization.** The redesigned OSHA field office will be structured into teams made up of both safety and health compliance staff working together to solve problems, representing the most effective way of utilizing limited resources. Two types of teams will be utilized: a Response Team to provide efficient and effective public service and a Strategic Intervention Team to target agency initiatives and problem-solving strategies.

(4) **Measurement.** OSHA will be evaluating its success on actual results achieved (outcomes), not just agency activities (outputs). A key indicator of the success of OSHA's efforts will be the change in the rate of injuries and illnesses in industries or areas where agency resources

have been concentrated. OSHA also will measure its success in serving customers based on the timeliness of its response and customer satisfaction.

**Implementation Plan:** The OSHA model area office is currently being tested in seven pilot offices. The goal for the project is to have 37 offices implement the design by the end of 1996.

## 11. Strengthen OSHA's Partnership with State Programs

**Action:** Increase the involvement of OSHA's state partners in developing and implementing national safety and health policies and redirect the focus of OSHA's monitoring of the states from counting activities to measuring results.

**Background:** Twenty-five states and territories operate OSHA-approved safety and health programs. These state programs cover 40 percent of the nation's workplaces, with the federal government providing partial funding for the states to implement their own job safety and health laws. State programs must be at least as effective as federal OSHA, but they do not have to be identical. This flexibility allows the states to serve as laboratories of innovation, experimenting with new methods for achieving workplace safety and health. At the same time, there needs to be a reasonable degree of nationwide consistency between federal and state programs. Thus, it makes good common sense for OSHA to work closely with the states in formulating policies which affect employee safety and health across the nation. This flexibility has allowed the states over the years to develop new and alternative programs.

- Thirteen state programs have in place statutory or regulatory requirements for workplace safety and health programs.
- Several states adopted standards for confined spaces, lead in construction, and hazard communication well in advance of federal action.
- A number of states have in operation variations of the "Maine 200" program.
- Almost half the states contribute additional funds above and beyond the available federal match.
- Many state plans have had access to workers' compensation data for years and use the information to direct their inspection and consultation targeting.

OSHA traditionally has monitored the states by looking at their activity levels and comparing them with the federal program. With state involvement, OSHA overhauled the monitoring process in 1994, reducing the number of activity measures from 112 to 48 and eliminating unnecessary reporting requirements. Efforts are underway to refine this system even further, shifting the focus away from measuring activities like inspections, and looking instead at the results of those activities, such as the number of employees removed from hazards.

**Description:** OSHA will increase its ongoing efforts to involve its state partners in the development of national policies through a number of means. The head of OSHA will regularly attend state plan meetings. States will be represented at all OSHA stakeholder meetings, and they will be able to participate on internal task forces, provide comments on draft standards, compliance policies, and other documents. To facilitate state involvement, OSHA will pilot an electronic mail system to allow immediate transmission of information

and documents and will use teleconferencing and other communication technologies to obtain wider state input at lower cost.

States will participate in the ongoing development of an OSHA Performance Measurement system that is based on desired program results, not just activities conducted. This measurement system will then be incorporated into the agency's process for monitoring and evaluating state programs.

**Implementation Plan:** OSHA's involvement of the state plans in policy development is ongoing. The electronic mail experiment will be undertaken in the third and fourth quarters of Fiscal Year 1995 and expanded in Fiscal Year 1996. State representatives will participate in the development of an expanded Performance Measurement system during the remainder of Fiscal Year 1995. Incorporating the measurement system into State Plan Monitoring will occur during Fiscal Year 1996.



## 12. Quick Fix: Incentives for Fixing Hazards Quickly

**Action:** OSHA will expand the policy of providing a reduction in penalties for safety and health hazards that are abated by the employer while an inspection is underway. This policy is currently being pilot tested at several OSHA area offices.

**Background:** The Occupational Safety and Health Act does not require immediate abatement of hazards as soon as they are identified. Because of the legal right of the employer to challenge the citations, employees may continue to be exposed to hazardous conditions for some time even after hazards have been identified.

**Description:** OSHA has successfully experimented with a "Quick-Fix" program to abate hazards immediately. Using this model, compliance officers reduce penalties for violations that are abated prior to an inspection's closing conference. This policy encourages employers to increase employee protection immediately and makes OSHA work better and cost less.

The "Quick-Fix" policy was pioneered by OSHA's area office in Parsippany, New Jersey. Since its implementation on October 1, 1993, there has been a 29-percent increase in the immediate abatement of violations found by that area office. Worker exposure to serious safety and health hazards is down, and the area office has saved time by not having to verify employer abatement of hazards.

OSHA also will test a variation on this policy to encourage quick abatement, even for those hazards that cannot be corrected on the spot. Under this variation, OSHA will delay sending a penalty notice and will adjust the penalty downward to the degree that the employer has abated the hazards identified.

**Implementation:** The agency will extend the "Quick-Fix" policy throughout the nation by July 1, 1995. The policy is now being pilot tested in at least one area office in every OSHA region and is a component of the area office redesign (GRIP) project, discussed elsewhere.

### 13. Improvements in Inspection Targeting System

**Action:** Focus OSHA's inspection targeting systems.

**Background:** OSHA has traditionally targeted employers for inspections using a priority system. First priority is given to reactive inspections initiated by reports of imminent danger, reports of fatalities or catastrophes, referrals from the media or other government agencies, and complaints from workers. Second priority is given to "scheduled" inspections, which are initiated solely by OSHA. OSHA operates three systems: one for construction, one for non-construction safety inspections, and one for non-construction health inspections. Construction inspections are scheduled by a random selection of larger, active construction sites using an econometric modeling technique. Non-construction safety inspections are scheduled using lists of employers in industries with high injury rates. Non-construction health inspections are scheduled using lists of employers in industries with a history of non-compliance with OSHA health regulations.

OSHA's current inspection targeting systems treat employers in a certain industry alike, regardless of their individual safety and health performance. Each employer is subject to the same enforcement inspection, regardless of their previous work or willingness to improve. In any industry, however, some workplaces are more hazardous than others, and OSHA's systems do not focus on the unsafe employers for enforcement action.

**Description:** OSHA will improve its enforcement system by focusing on the most hazardous workplaces. Relying on data that the agency will obtain from a variety of internal and external sources, including data from state workers' compensation agencies, the agency will focus its enforcement activities on those employers with excessive rates of workplace injury and illness and a record of serious and repeated OSHA violations. This will vastly improve OSHA's ability to focus its resources on employers who ignore safety and health rules and put their employees at risk.

By improving its enforcement targeting system, OSHA will be able to use its enforcement program where it is best suited, with employers that have serious workplace problems and refuse to correct them.

**Implementation Plan:** In 1995, OSHA will implement the program using its focused inspection programs, the redesign of field offices, expansion of the Maine 200 concepts, and the data initiative.

## 14. Compliance Assistance Through Information Technology

**Action:** Make safety and health information readily available to the public through a variety of electronic means.

**Background:** Demand is increasing from employers, employees, other federal agencies, state and local governments, safety and health professionals, and many other organizations and individuals for safety and health information to help provide working men and women with safe and healthful workplaces. To illustrate, one of the Government Printing Office's top selling items since its introduction in 1992, is the OSHA CD-ROM, which provides in one convenient format, a wealth of information about occupational safety and health and OSHA regulations. OSHA recognizes that an informed safety and health community is better able to recognize and protect itself from workplace hazards, and the agency is continuing to expand its ongoing efforts and implement new information-dissemination projects to provide needed safety and health data to the public.

### Description:

(1) **Standards-Setting Activities.** OSHA will continue and expand its present efforts to disseminate electronically—for example through the OSHA CD-ROM and the Department of Labor Bulletin Board, DOL-BBS—the text of proposed and final standards to increase public involvement and input in the regulatory process. To involve stakeholders even earlier in the rulemaking process, the agency recently disseminated electronic copy and collected preliminary comments through Internet and the DOL BBS on a draft pre-proposal standard for ergonomics. OSHA expects to use this process routinely for future rulemaking efforts.

(2) **OSHA Inspections and Other Activities.** OSHA is working with private and public organizations to promote wider dissemination and analysis of the Agency's 20 years of documented inspection reports and other data from its on-site consultation and anti-discrimination programs. OSHA has provided a number of organizations copies of the data on magnetic tape and is now compiling inspection data on a two-disk CD-ROM set which will be made available to the public.

(3) **Assistance with Existing Standards.** OSHA is expanding its efforts to provide employers and employees with electronic access to explanatory and interpretative materials to help them understand and comply with safety and health requirements. Materials are currently available via various means: OSHA's CD-ROM, OSHA's Internet servers, OSHA's fax-on-demand service, and the OSHA Computerized Information System (OCIS), which are available to the public through DOL-BBS. In addition, OSHA has developed a user-friendly software application, available free via OSHA's Internet servers, to assist employers in compliance with the cadmium standard. A similar application for asbestos is under development. OSHA also is developing, in cooperation with the Environmental Protection Agency, the OSHA System for Compliance Assistance and Referral (OSCAR), which is expected to promote easy public access to OSHA standards and interpretations.

(4) **Worldwide Safety and Health.** OSHA's safety and health information has been available worldwide for several years through the Internet on World Wide Web, GOPHER, and FTP. OSHA will continue to build its World Wide Web home page, which is already recognized as one of the world's leading locations for safety and health information.

(5) **Small Business Initiatives.** OSHA is one of several agencies working with the National Performance Review to provide electronic access to regulatory information and services through the Internet. This project will provide small businesses with a convenient means to obtain information about occupational safety and health.

**Implementation Plans:** OSHA will continue to expand its Internet presence and to work with the business community, other federal agencies, and state and local governments to exchange information on occupational safety and health. Other efforts include the continued development of new expert system software to assist with compliance of standards, expanded dissemination of information on CD-ROM, and development of new multimedia CD-ROM applications for training.

The following areas have been identified for immediate implementation or pilot projects:

*Expanded Information On Internet via World Wide Web:*

- Presenting Frequently Asked Questions (FAQs) on safety and health issues on OSHA's World Wide Web home page.
- Statistical data on most frequently cited standards.
- News releases.
- OSHA pamphlets and publications.
- Training materials available on safety and health on video and audiotape.

*Expanded Information to be available on CD-ROM:*

- Adding publications and other information to the OSHA CD-ROM.
- Adding new software for easier viewing of images (photographs, illustrations).
- Publishing new CD-ROM with all OSHA inspections.

## 15. Measuring OSHA's Performance—Shifting from Tracking Activities to Focusing on Results.

**Action:** Develop a performance measurement system that focuses on results (i.e., the impact of OSHA activities on occupational injuries, illnesses, and fatalities).

**Background:** OSHA is in the process of fundamentally redefining the way the agency does business. This requires changing the way the agency measures its performance. In the past, OSHA used a limited number of activity measures—primarily enforcement-related, such as number of inspections—to gauge its performance. As a result, the agency has been criticized as being driven by numbers that do not relate directly to the goals of the Occupational Safety and Health Act (i.e., to reduce workplace injuries, illnesses, and fatalities).

**Description:** OSHA is in the process of developing a comprehensive performance measurement system that will shift the focus from tracking activities to monitoring results. The development of this system will take time, and although some improvements have already been accomplished, OSHA envisions that the complete system will be phased in over the next several years as the needed information becomes available on a systematic basis. The goals of the system are to improve OSHA's capability to (1) quantify and evaluate the successes and failures of its various programs based on program results, (2) identify the most effective and efficient program mix, and (3) promote iterative development of programs and policies based on outcome data.

**Implementation Plan:** Significant steps are planned and underway for developing and implementing OSHA's new performance measurement system:

*Fiscal Year 1995*—For the first time in the agency's history, OSHA is not using the total number of inspections as a primary measure of the agency's performance. The Fiscal Year 1995 performance measurement system consists of tracking the Fiscal Year 1995 goals and objectives, implementing a set of indicators that track intermediate outcomes, and testing candidate measures in several pilot projects. In addition, in Fiscal Year 1995, the agency is exploring options to obtain establishment-specific data on a systematic basis to target its services and measure its impacts. OSHA is a volunteer pilot agency under the Government Performance and Results Act (GPRA) and is developing a strategic plan, a performance plan, and a performance report in Fiscal Year 1995. OSHA has already developed a framework for its new measurement system, a set of key definitions, and a list of critical questions to be answered.

*Fiscal Year 1996*—OSHA will initiate the collection of site-specific data. OSHA has developed a set of candidate measures for Fiscal Year 1996 which will be refined on the basis of OSHA's Fiscal Year 1995 pilots.





Washington Office  
206 E Street, N.E.  
Washington, D.C. 20002  
202/546-7584  
FAX: 202/546-9289

STATEMENT BY  
THE NATIONAL ROOFING CONTRACTORS ASSOCIATION (NRCA)  
TO THE  
COMMITTEE ON SMALL BUSINESS  
U.S. HOUSE OF REPRESENTATIVES  
CONCERNING THE  
OVERHAUL OF THE  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)  
AND THE IMPLICATIONS FOR SMALL BUSINESS  
JULY 26, 1995

The National Roofing Contractors Association (NRCA) is an association of roofing, roof deck and waterproofing contractors. Founded in 1886, it is one of the oldest associations in the construction industry and has over 3,500 members represented in all 50 states. All NRCA contractors are small, privately held companies; NRCA's average member employs 35 people and has sales of just over \$3 million per year.

This statement is also being submitted on behalf of the Associated Specialty Contractors (ASC)\*, a federation of eight national associations with a combined membership of 26,000 contracting firms. Specialty contractors make up over 25 percent of all construction volume and ASC represents industries employing over 2 million workers.

NRCA is also a member of the Coalition on Occupational Safety and Health (COSH), which is comprised of more than 400 companies, associations, and professional societies that represent all sectors of business, large and small, in America.

COSH members are committed to providing safe and healthful working conditions for their employees and recognize this as a fundamental responsibility of effective management. COSH believes this employer commitment is reflected in the steady downward trend in workplace injuries, illnesses and fatalities.

We applaud the Committee on Small Business for its decision to engage in routine oversight hearings of regulatory agencies such as the Occupational Safety and Health Administration (OSHA). Systematic congressional oversight is crucial to curbing the growth of regulations and removing the strangle hold that overregulation has on small business in this country.

#### OSHA'S HAZARD COMMUNICATION STANDARD

One of the most egregious regulatory burdens placed on the roofing industry today is OSHA's Hazard Communication Standard, or Haz-Com, originally promulgated in 1983 for the manufacturing sector. In 1987, OSHA expanded Haz-Com to include construction. The standard requires employers to assess chemical hazards in the workplace; write a policy for the safe handling of these materials including a complete inventory; and provide information and training to exposed employees.

The cornerstone of this training is the Material Safety Data Sheet, or MSDS. It will tell you everything you could want to know about a hazardous material such as the manufacturer's name and address; ingredients; physical characteristics; flammability; reactivity; potential health hazards; precautions for safe handling; and required personal protective equipment.

Regrettably, Haz-Com and its MSDSs are confusing, expensive, and have done little to improve safety within the construction industry. Haz-Com was supposed to provide a single reference source for employers and employees in the event of an emergency involving dangerous substances, but, in fact it is the last place that they would look -- Haz-Com has given us thousands of MSDSs on everything from "air" to dishwashing detergent.

On any given day, contractors must have MSDSs at all job sites for all "hazardous" materials. They must know which of these products are in use at each job site and make sure the correct, brand specific MSDS is available at each job site. No wonder that in 1994, Haz-Com violations comprised nine out of the top twenty most frequently cited OSHA standard violations (attachment) -- they are the easiest to identify because 100 percent compliance is nearly impossible.

OSHA has opened the public record for various parts of the standard, sometimes for long periods of time. A modified final Haz-Com standard was printed in the February 9, 1994 *Federal Register*. Despite the proliferation of paperwork, and the fact that the standard is the most frequently cited by OSHA inspectors (a roofing contractor in Indiana was cited for not having a brand-specific MSDS for caulk), the modified standard makes minor changes that can be found only with a magnifying glass.

The President recently signed into law the Paperwork Reduction Act re-authorization, which overturns *Dole v. United Steelworkers of America*, allowing the Office of Management and Budget (OMB) to review third-party paperwork requirements such as Haz-Com. The question is: Will the Clinton Administration seize the opportunity to reign-in Haz-Com?

#### RECENT ADMINISTRATION/OSHA INITIATIVES

The Clinton Administration has taken several highly publicized steps this year in the name of regulatory reform, but regrettably, the substance does not match the rhetoric touting these steps. On March 16, the President held a press event at a print shop to announce a list of "reinventing regulation" proposals. Though most involved the Food and Drug Administration and the Environmental Protection Agency, two were government-wide: 1) agencies would be given discretion to allow small businesses to apply the dollar amount of assessed fines to fix the problems, or even waive the fines for first-time violators who agree to quickly correct the errors; and, 2) the Administration would direct each agency to cut in half the frequency of periodic reports, consistent with statutory requirements. On April 21, the President issued a memorandum to agencies to implement these proposals -- but the memorandum lacks the force of law and leaves action entirely to the discretion of the agency.

The memorandum directs agencies to waive penalties for small businesses "to the extent permitted by law" if the business shows a good-faith effort to comply with applicable regulations; if the cited violation does not involve criminal wrong-doing or a significant threat to health, safety or the environment; if the violation is corrected within a time-frame set by the

agency; and if the agency so chooses. It is left to each agency to come up with its own definition of "small" business.

The memorandum also directs agencies to reduce by one-half the frequency of regularly scheduled reports which employers are required to provide to the federal government, but agencies are given broad discretion to ignore this directive. In fact, bureaucrats have explicit permission not to reduce reporting requirements if they believe cutting back might "impede the effective administration of the agency's program."

Each agency was given until June 15 to submit a plan to OMB describing how it would implement the provisions of the memorandum, and any enforcement policies modified as a result of this exercise were to take effect by July 4.

On May 16, at a sheet metal factory, the President announced a major "Reinventing Government" initiative involving changes at OSHA. It is puzzling that President Clinton used the announcement to criticize Republican efforts to reform OSHA, because of the similarity between statements in the Administration's white paper that accompanied the announcement and the proposals in H.R. 1834, the Safety and Health Improvement and Regulatory Reform Act of 1995.

Per the President's announcement, OSHA's new inspection program will go nationwide with the "Maine 200" pilot program. OSHA used Maine's workers' compensation claims to identify the 200 companies with the worst safety records. According to OSHA, they accounted for nearly half of Maine's (workers' compensation) injuries and illnesses. These companies were given the choice of either developing a comprehensive health and safety plan to fix the problems, or be subject to traditional OSHA inspections and heavy fines. Not surprisingly, most opted for the "cooperative" approach and OSHA has claimed dramatic results.

The other new inspection program will extend "focused inspections" in the construction industry to all industries. The program has been in effect since October 1, 1994, and, in theory, OSHA inspectors determine from the contractor (with job site responsibility) whether an effective safety and health program is in place and being implemented by a competent person. If this meets OSHA's criteria, then inspectors focus on finding hazards related to the four principal hazards in construction: falls from elevations, being struck by an object, crushing injuries, and electrical shock. If, according to OSHA, a contractor does not have an effective safety program being administered by a competent person, then OSHA inspectors conduct a "comprehensive, resource-intensive investigation."

Unfortunately, OSHA's performance regarding regulatory reform has been poor. For example, due to inadequate instructions provided by the agency to inspectors, less than 5 percent of all OSHA construction inspections have been of the "focused" variety. And even though total OSHA inspections went down in 1994, total fines went up. Just last summer, OSHA raised the minimum willful serious violation penalty for businesses from \$5,000 to \$25,000, as announced on nationwide television by the Secretary of Labor. However, with little notice this March,

OSHA reduced the minimum penalty for employers with 50 or fewer workers to its previous level of \$5,000.

In May, OSHA reported to business and union representatives from the construction industry that, pursuant to the President's February 21 directive to agencies to eliminate or revise regulations, its review of 3,000 pages of OSHA regulations found 1,000 pages of duplication. This represents pages that could be eliminated without substantively touching the regulations. On June 12, at the White House Conference on Small Business, the President and Vice President announced to the delegates that 16,000 pages in the *Code of Federal Regulations* would be eliminated.

### OSHA'S "TRUTH SQUAD"

OSHA's attempts to "reinvent" itself would seem to be the second stage of its response to criticism of its standards and policies. The first stage involved the formation of a rapid response team, or "Truth Squad," to diffuse reports of excessive OSHA regulation. It has been NRCA's experience with OSHA's "Truth Squad" that it vigorously denies the existence of ridiculous regulations, even as the agency quietly modifies them and/or alters its enforcement of them.

For example, this year the Secretary of Labor and OSHA have consistently denied reports that there is a regulation that prohibits gum-chewing while roofing. This has been happening repeatedly despite a January 13 memo from OSHA's Directorate of Compliance Programs to regional administrators instructing inspectors to refrain from issuing citations under the gum-chewing provision.

Throughout this year, OSHA has also repeatedly denied that it issues citations under Haz-Com when household products, such as Joy dishwashing detergent, are being used without MSDSs at job sites. Yet on March 21, OSHA's Directorate of Compliance Programs issued a memo to regional administrators stating that an enforcement review showed that "citations have been issued for materials such as bricks, rebar, lubricating oils, welding rods and dishwashing liquid without adequate documentation of employee exposure to a specific hazardous chemical or that their use fails to meet OSHA's consumer product exemption."

Another example is OSHA's new Fall Protection Standard, which has been in effect since February 6. It triggers costly and burdensome work practices at heights above six feet and has touched off a firestorm of protest. Despite the fact that workers, management, and even state-plan OSHA programs are dissatisfied with the standard, OSHA's "Truth Squad" portrayed the standard as eminently fair and flexible. Nonetheless, OSHA management has convened a series of meetings with NRCA and it is NRCA's hope that the Fall Protection Standard can be fixed.

NRCA commends the House Small Business Committee's Subcommittee on Regulation and Paperwork for holding a hearing on the Fall Protection Standard, June 15, 1995.



## CONCLUSION

Clearly, even with administrative attempts to "reinvent" OSHA, Congress will need to pass the meaningful OSHA reforms embodied in H.R. 1834 to ensure that necessary changes take place within the agency regarding OSHA policies and practices.

Members of the Associated Specialty Contractors: Mason Contractors Association of America; Mechanical Contractors Association of America; National Association of Plumbing-Heating-Cooling Contractors; National Electrical Contractors Association; National Insulation and Abatement Contractors Association; National Roofing Contractors Association; Painting and Decorating Contractors of America; Sheet Metal and Air Conditioning Contractors National Association.

## Most Frequently Cited OSHA Standard Sections Fiscal 1994

Standard Section 29 CFR	Standard	Subject	No. of Alleged Violations
1 1910.1200(e)(1)	✓ HazCom/General Industry	Written Program	4,728
2 1904.2(e)	Recordkeeping	OSHA Log	3,944
3 1910.1200(h)	✓ HazCom/General Industry	Information, Training	3,833
4 1926.59(e)(1)	✓ HazCom/Construction	Written Program	3,463
5 1903.2(a)(1)	OSHA Notice	Posting	2,901
6 1926.59(h)	✓ HazCom/Construction	Information, Training	2,277
7 1910.147(e)(1)	Lockout/Tagout	Energy Control Program	1,958
8 1910.212(e)(1)	Machine Guarding	Guarding Methods	1,887
9 1910.215(b)(9)	Abrasive Wheel Machinery	Guard Adjustments	1,737
10 1910.1200(f)(5)(i)	✓ HazCom/General Industry	Container Labeling/Identity	1,729
11 1910.1200(c)(1)	✓ HazCom/General Industry	MSDSs	1,627
12 1910.151(c)	Medical Services/First Aid	Drenching Facilities	1,584
13 1910.1200(f)(5)(ii)	✓ HazCom/General Industry	Container Labeling/Hazard Warnings	1,571
14 1926.21(b)(2)	Safety Training	Worker Instruction	1,541
15 1926.100(a)	Head Protection	Protective Helmets	1,412
16 1910.219(e)(1)	Power Transmission Belts	Pulley Guarding	1,375
17 1926.59(g)(1)	✓ HazCom/Construction	MSDSs/Provision	1,306
18 1926.500(d)(1)	Cranes and Derricks	Rated Load Marking	1,271
19 1926.59(e)(8)	✓ HazCom/Construction	MSDSs	1,200
20 1910.147(c)(7)(i)	Lockout/Tagout	Worker Training	1,186
21 1910.147(c)(4)(i)	Lockout/Tagout	Energy Control Procedure	1,184
22 1910.212(a)(3)(ii)	Machine Guarding	Point of Operation	1,177
23 1910.215(e)(4)	Abrasive Wheel Machinery	Work Rests	1,159
24 1910.23(e)(1)	Floor/Wall Opening Guarding	Standard Railing	1,114
25 1926.404(b)(1)(i)	Wire Design	Ground Fault Protection	1,029
26 1910.305(b)(1)	Wiring Methods/Protection	Cabinets, Boxes, and Fittings	1,021
27 1910.132(a)	Personal Protective Equipment	Provision, Use, Maintenance	1,008
28 1910.1200(g)(8)	HazCom/General Industry	MSDSs/Maintenance	1,002
29 1926.451(d)(10)	Tubular Welded Frame Scaffolds	Guardrails, Toeboards	985
Section 5(a)(1)	General Duty Clause	Safe and Healthful Conditions	981
Total Number of Alleged Violations Cited in Fiscal 1994:			174,305



4200 Evergreen Lane # 315, Annandale, Virginia 22003 • Phone: (703) 642-6614 • Fax (703) 642-0497

#### BOARD OF DIRECTORS

*President*  
Bonnie-Jean Brooks  
*Vice President Information*  
Vincent A. Scott  
*Vice President Policy*  
Tham Johnson  
*Vice President Services*  
Charlene Kunnely  
*Secretary*  
Lynne R. Megan  
*Treasurer*  
Ken Lovan  
*Directors*  
Mark R. Draves  
Emily Enus  
Amy Cerowitz  
James C. Hanson  
David Ray Kiely  
Peter Kowalski  
Cindy Mahan  
P. Dennis Matson, Ph.D.  
Gary L. Mrosko  
H. James Richardson, Jr.  
James Weeks  
*Past President*  
Peter "Skip" Sayvick

#### REPRESENTATIVES

Ray C. Anderson - WV  
William H. Ashe, Ed.D. - VT  
Kathryn Atha - GA  
Carol Beatty - MD  
David Berkowicz - NY  
Cale Bohling - AZ  
Roger Brobst - AK  
Julie Coler Burns - ND  
James W. Blume - KS  
Denise Butts - MI  
C.A. "Mike" Chaffin - MT  
David Ellison - IN-ARF  
Helen Fitzsimmons - TX  
Margaret J. Gould - CT  
Robert Haddadi - ARRM  
Nancy Silver Hargreaves - MA  
Gail Howell Henning - NC  
Nina Hoenyman - OK  
Chene Hynes - NM  
Terry Jensen - UT  
Thomas Lewins - OH  
Roley Linder - SC  
Andi Leopoldus - CO  
James D. Loyd - CA  
James McManus - ANCOR-MO  
Kathy Meath - ANCOR-MO  
James Michael, Ph.D. - NeAPR  
Bob Mobley - KARR  
Elizabeth Foe - VA  
Lisa Rafferty - RI  
Rev. Redden - ID  
Patricia Reach - NJ  
Fred Romkema - SD-ACBS  
Peggy Schneider - AR  
Cloria Sheets - IN-ARF  
Leslie Skeen - ANCOR-MO  
Steven R. Skeen - WA  
Chris Sparks - IARRF  
Jerrold Spilecki - DE  
Timothy G. Sullivan - NH  
Art Trunkfield - TN  
Richard Turpen - IARRF  
Sandra S. Volker - NeAPR  
Gordon L. Welling - AL  
Tenn C. Williams - ARRM  
Ron B. Wisecarver, IL  
Angie Zender - WI

#### EXECUTIVE DIRECTOR

Joni Fritz

August 2, 1995

The Honorable Jan Meyers  
U.S. House of Representatives  
2303 Rayburn House Office Building  
Washington, D.C. 20515

Dear Representative Meyers:

In consideration of your efforts as Chair of the House Committee on Small Business to address federal government's impact on business and particularly in light of the recent oversight hearing regarding OSHA reform, I am forwarding the following comments on federal regulations with adverse affects on member agencies of the American Network of Community Options and Resources (ANCOR).

ANCOR is a nationwide association with over twenty-five years of proven leadership representing 650 private nonprofit, for-profit and family care agencies that together provide supports and services to over 50,000 people with mental retardation and other severe disabilities. More than three-fourths of our members are nonprofit agencies.

As industry leaders in the field of disabilities and as members of the small business community, ANCOR members support federal reforms which simplify or eliminate redundant, outdated, and micro-managed federal regulations which contribute to the cost of services and not to the quality of life of people with disabilities. To this end, ANCOR established a "Regulatory Work Group" last spring and developed comments on specific OSHA, HCFA, Wage and Hour and HUD regulations to assist the Administration's "reinventing initiative" and specific directive to agencies to review all current regulations.

I hope that ANCOR's comments and recommendations regarding OSHA are helpful in refocusing the agency's energies, while protecting the health and safety of employees dedicated to enhancing the lives of people with disabilities. The enclosed comments on wage and hour issues were included in a prior letter to you in June as a request for reform by members of the House Employer-Employee Relations Subcommittee of the Economic and Educational Opportunities Committee.

If ANCOR can be for further assistance, please contact either myself or Suellen Galbraith.

Sincerely,

Joni Fritz  
Executive Director

Private Providers Supporting People with Disabilities

Formerly the National Association of Private Residential Resources

**AMERICAN NETWORK OF COMMUNITY OPTIONS AND RESOURCES**  
**REGULATORY RECOMMENDATIONS**

*TABLE OF CONTENTS*

**Health Care Financing Administration**

42 CFR PART 483—Intermediate Care Facilities for People with Mental Retardation (ICFsMR)

**Department of Labor, Wage and Hour Division**

29 CFR PART 778.114—DOL Rules Governing Overtime for Non-Exempt Employees

29 CFR PART 785.23—DOL Letter of Interpretation Regarding SleepTime

29 CFR PART 825—DOL Family and Medical Leave Act

**Department of Labor, Occupational and Safety Administration**

Introduction and Overall OSHA Recommendations

49 CFR PART 1910.1200—Hazard Communication Standard

49 CFR PART 1910.1300—Bloodborne Pathogens Standard

29 CFR PART 1904—Injury and Illness Forms

29 CFR PART 1910.20—Records Access Standard

Pending Standards

Appendices A, B, C, D

**Housing and Urban Development and OMB**

Section 811 Housing and OMB Circular A-133 Audit Guidance

## AMERICAN NETWORK OF COMMUNITY OPTIONS AND RESOURCES

### REGULATORY REFORM RECOMMENDATIONS

#### 42 CFR PART 483

#### Intermediate Care Facilities for People with Mental Retardation (ICFs/MR):

For some years, the American Network of Community Options and Resources has been urging the Health Care Financing Administration to revise the federal rules which govern intermediate care facilities for people with mental retardation and related conditions (ICFs/MR). The most lengthy discussion was mailed in July 1994, in response to a request for comments on a revised ICF/MR survey process. In that letter, ANCOR urged HCFA to proceed as quickly as possible with plans that would lead to a total revision of these rules. The language—and even some of the concepts (e.g., developmental programming) which formed the base on which the ICF/MR rules were developed in the early 1980s—are dated, we argued, and require total rewriting. HCFA is to be congratulated for the steps it has taken since that time to revise the ICF/MR rules and survey process, but more should be done.

#### **New approach to federal rules being studied**

HCFA has funded a project being conducted by the Human Services Research Institute in Massachusetts which should provide the basis for a major reconfiguration of the Medicaid quality assurance process that will be in keeping with contemporary practices of human service development and support. This would also be consistent with the HCFA Strategic Plan, which is based on principles of Total Quality management and attention to the customer first, but involving all stakeholders, including providers. Frankly, change is occurring so rapidly in Washington that we fear that the ICF/MR program will be abandoned before a significant modification of the rules can take place, and much of that initiative is based on outmoded rules which have become burdensome and are not cost-effective. Abandonment of the program would be unfortunate.

The effectiveness of current service methodologies has been clearly demonstrated by the individuals with severe disabilities who, over the past several years, have moved directly from large institutions to individualized living arrangements in the community under the Medicaid waiver program for Home and Community-based Services (HCS). Outcome measures have been developed in the last few years by The Accreditation Council on Services for People with Disabilities and other entities in the states. In light of the time constraints, it might be wise for HCFA to develop a field test of existing outcome standards in ICFs/MR in one or more states.

#### **New survey protocol being field tested**

We know that HCFA is field testing a new survey protocol which we hope will significantly reduce the amount of time spent in surveying good facilities, and which would speed the survey process. When it is put in place, we hope that it will result in cost savings and more consistency in the survey process while rules are being rewritten. One ANCOR member reported that 5 surveyors spent 4 days in an ICF/MR for 4 people which had no record of ever having a deficiency. That is a ridiculous waste of time and resources! Until the survey protocol can be formally changed, HCFA should issue instructions to surveyors to counteract the way surveys have recently been conducted. Surveyors have told ANCOR members that their new (and



**42 CFR PART 483****Intermediate Care Facilities for People with Mental Retardation (ICFs/MR)****Page 2**

inappropriate) attention to paper and process is a result of instructions from headquarters in Baltimore. A member has also been told that surveyors have been instructed to "stop giving positive feedback during exit interviews." Customers and stakeholders are not being treated with respect.

ANCOR is not sure where these messages actually originated, but we urge that they be countermanded to improve the process and the relationships with providers. We suspect that the difficulty in transmitting messages from headquarters to surveyors is caused at least in part by the way the agency is organized, with regional offices placed between headquarters in Baltimore and the area offices. It seems to be difficult for messages to get directly from Baltimore to the state surveyors.

**Interim action to improve surveys**

ANCOR suggests, in addition, that HCFA speed up its effort to revise the ICF/MR rules by looking at the data collected on its surveys and dropping rules that are not resulting in citations. The absence of citations is evidence either of broad compliance in the field or the effect of other state and local surveys (e.g., state licensing and fire marshal surveys) to which ICFs/MR are subjected each year. The federal government should also consider accepting results of surveys conducted by other entities. At the present time, surveys are conducted at ICFs/MR several times a year by other groups. In some states there are more than a dozen entities which visit ICFs/MR each year. If these cover areas included in the ICF/MR surveys and in areas that the data show are in broad general compliance in a state, HCFA could deem agencies which had passed those surveys to be in compliance in the applicable areas of the ICF/MR rules.

**State and surveyor issues**

It is important to note that while states complain about the excessive restrictiveness of federal rules, they compound the problem by developing additional rules of their own to assure that providers will comply with the state's understanding of the federal regulations. In Maine, for example, there are xxx pages of state rules to supplement less than 10 full pages of federal ICF/MR rules. In addition, HCFA has about 140 pages of Interpretive Guidelines to supplement its own rules. Frequently, statements in the interpretive guidance or "probes" are treated like rules, all of which results in a burdensome system.

A further issue relates to the blame states sometimes lay at the feet of the federal government when surveyors indicate that requirements which the state has promulgated are instead federal requirements over which they ostensibly have no control. This occurs far too frequently to be easily dismissed.

Surveyors sometimes also cite things that are not within their purview, or which make no sense. For example, one member agency was cited for a wire hanging out of a wall outlet with wires exposed. It was a phone wire that was not being used at the time. Others have received citations for "wet paint," and another because studs in a room were not covered during a reconstruction process. Surveys which are conducted during meal time will reveal food particles in the kitchen

**42 CFR PART 483****Intermediate Care Facilities for People with Mental Retardation (ICFs/MR)****Page 3**

and dining area which will be cleaned up after the meal. Homes are cited for scrapes on walls and nicks in furniture caused by wheelchairs. These are unavoidable! In one case a home was cited for improper snow removal on the sidewalk. It was the home's only deficiency, but the survey team came back in May to see if this deficiency had been corrected. These examples go on and on! Sometimes it seems as though little common sense is used in the process.

**ANCOR HAS THE FOLLOWING COMMENTS TO OFFER REGARDING SPECIFIC ICF/MR STANDARDS WHICH ARE FOUND TO BE BURDENSOME AND HAVE LITTLE RELATIONSHIP TO THE QUALITY OF SERVICES PROVIDED IN A HOME.** Some of these represent the need for regulatory change, but others could be achieved through modifications in the survey process and/or surveyor training.

It must be noted that some of the regulations are used as "catch-alls" with a variety of deficiencies assigned to them. This results in different violations causing the same tag number to be out of compliance over several consecutive surveys, which in turn can bring a fine even though earlier problems have been corrected. For example, one of our members was recently fined \$400 because his agency was cited under staff training three years in a row for entirely different problems.

**W119 - 483.410(d)(3) - The [ICF/MR] must assure that outside services meet the needs of each [of the people they serve].** This is an unreasonable expectation in today's service delivery system when residential and day programs are operated by different agencies and the ICF/MR has no control over the daytime program. One member agency was required to develop a procedure check list for school lunch time and to send a staff person to the school (despite the fact that we understand public schools have been exempted from this requirement) and other daytime programs to monitor their teaching/programs.

An alternative method should be devised to hold daytime and other outside programs directly responsible for complying with federal rules. If not administered by the ICF/MR, and if no alternatives are available, the facility has no control over problems identified with the quality of outside services, particularly when these are medical services. It is difficult to find medical specialists who will accept a person whose services are paid for by Medicaid and it is unrealistic to expect the ICF/MR to exert control over medical providers with whom they contract for services.

Citations under this tag number result in paperwork which seldom leads to a change in the quality of services. ICF/MR providers should not be held responsible for citations in program areas over which they have no control. The exception for educational programs operated by public schools should be extended to other daytime programs, and these programs should be surveyed separately. It is not productive to threaten a contractor with termination of the provider agreement if there are no alternatives available, and the ICF/MR provider can do little else.

**W128 - 483.420(a)(6) - Ensure that [the people who live in an ICF/MR] are free from unnecessary drugs and physical restraints.** Many citations under this regulation have nothing to do with ensuring that the purpose of the rule is achieved. Examples of "unnecessary drugs" have included Advil, Oscal and over-the-counter vitamins—and these are not aberrations. This

**42 CFR PART 483****Intermediate Care Facilities for People with Mental Retardation (ICFs/MR)****Page 4**

application of the rule has nothing to do with ensuring that people are free from unnecessary drugs or restraints.

**W130 - 483.420(a)(7) - [The ICF/MR must] provide each [of the people living in the home] with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs.** The survey process itself frequently violates this regulation when surveyors insist upon observing toileting and other personal hygiene activities, often inappropriately. Such observations should be required only when there is some evidence that an individual is being physically injured by a staff person or by equipment used to help in toileting or bathing.

A member was cited when one of the people who lived in the ICF/MR was observed walking from his bedroom to the bathroom with his robe open. There was no staff person present to prompt that person to close his robe, so the agency was cited.

Some members have been ordered to install privacy curtains in bedrooms for more than one person, even for children. This makes bedrooms far more institutional in appearance. In one of those wonderful Catch 22 situations, one of ANCOR's members was cited because privacy curtains did not meet this ICF/MR regulation. Later a fire marshal cited the facility because the life safety requirement calls for mesh curtains.

**W136 - 483.420(a)(11) - Ensure [that the people who live in the ICF/MR have] the opportunity to participate in social, religious, and community group activities.** This rule is not adequately funded in some states. For example, one ANCOR member estimates that adequate implementation of this standard would cost his agency an additional \$8.63 per day for each individual served, for a total of \$274,468 per year. That agency looked at staffing, administration, training and transportation costs; and at the staffing level necessary for all of the people they support.

**W157 - 483.420(d)(4) - which requires that appropriate corrective action be taken when allegations of abuse are verified** is difficult to enforce when a parent is responsible for using punishment that exceeds that which a facility is permitted to use.

**W159 - 483.430(a) - Each [person's] active treatment program must be integrated, coordinated and monitored by a qualified mental retardation professional.** The effect of citations under this tag number result in forcing the QMRPs to spend more time addressing paperwork to be certain that records document "coordination and monitoring." This has a paradoxical effect in that the QMRPs are spending *less* time actually involved with the people who receive services facilitating the integration, coordination and monitoring of supports. To focus on outcomes, interactions should be observed to determine whether people are receiving integrated, coordinated supports.

To provide some examples of citations which have occurred under this rule which resulted in increasing the amount of time spent in record keeping: (1) "John will lift his cup and drink from it" is an inadequate statement because it contains two behavioral statements. Why should the focus be on the paper rather than observing John to see if he is using a cup correctly? (2) A

**42 CFR PART 483****Intermediate Care Facilities for People with Mental Retardation (ICFs/MR)****Page 5**

provider was told that tooth brushing should be broken down into 35 separate steps. It is interesting that this represents more than one for each tooth. The paperwork, including data collection, that results is costly and unnecessary. The field has moved well beyond this type of programming.

**W164 - 483.430(b)(1) - Each [person served] must receive the professional program services needed to implement the active treatment program defined by each [person's] individual program plan.** If staff can perform the necessary treatments/services, it should not be necessary for a professional to be involved in the hands-on delivery of those services. This regulation should not be cited unless the program is not being implemented appropriately. As it is, citations under this standard are often nitpicking and costly to correct. This is an example of a situation where "guidance to surveyors" is sometimes treated like a rule. However, on the other hand, the guidance that surveyors are to "determine if the facility's delivery of professional services is adequate by the extent to which individuals' needs are aggressively and competently addressed." (emphasis ours) is not well followed. Here we have a case where the Interpretive Guideline is ignored in some instances and over-enforced as a rule in others. One ANCOR member was found to be out of compliance under the definition of the program plan section of this tag number when a program addressing verbal and physical aggression did not include a written definition of these two terms.

**W167 - 483.430(b)(2) - The facility must have available enough qualified professional staff . . .** is used to enforce paper requirements, while outcomes for the people receiving services are ignored.

**W168 - 483.430(b)(3) - Professional program staff must participate as members of the interdisciplinary team in relevant aspects of the active treatment process.** The needs and choices of individuals, rather than the process, should determine which staff should attend IDT meetings. This issue is addressed in some consent decrees which indicate that it is sometimes appropriate to meet with one person, which would violate this rule.

**W169 - 483.430(b)(4) - Professional program staff must participate in on-going staff development and training . . .** People other than the QMRP have the ability to train staff. The types and number of staff should be determined by the needs of the people served, but this rule is used in some surveys to require an ICF/MR to have contracts with professionals of each of the listed types.

**W181 - 483.430(b)(5)(xi) - indicates that: "If the [person's] individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of paragraph (b)(5)(I) through (x) of this section are not required,"** but is usually ignored. If outcomes were the focus of surveys, there would be fewer citations of (I) through (x). However, these have become a mandate for agreements with an array of professionals, many of whom never see any of the people living in the ICF/MR. Surveyors often are required to prove that professional licenses of those with whom the ICF/MR has contracts have not expired.



**42 CFR PART 483****Intermediate Care Facilities for People with Mental Retardation (ICFs/MR)**

Page 6

**W186 -483.430(d)(1) - The facility must provide sufficient direct care staff . . .** Has been cited when: one of the people living in a home ate with her face too close to her plate, an individual stood up while spooning food onto her plate instead of remaining seated at the dinner table, and an individual with a program to use a napkin did not receive the full benefit of that program since staff failed to "model" how to use a napkin. In yet another instance, an agency was cited because not all of the people living in a home participated in setting the dinner table. It is unusual for everyone to participate in setting the table in an ICF/MR or in a typical family home. Generally one person is given this task, and the task may rotate from person to person.

**W190 - 483.430(e)(2) Staff Training** - is one of the "catch-all standards" mentioned above. In one case a series of citations began with this one: the ICF/MR was first cited with a deficiency under this tag number because staff were pouring milk into glasses because it was believed that the gallon milk jugs were too heavy and did not have handles that were appropriate for the people living in that home to use. To correct this deficiency, the ICF/MR purchased small pitchers with wide handles so the people living in the home could pour their own milk. During the resurvey, the agency was cited under a sanitation tag for pouring the milk out of its original container into the pitchers! The resulting correction was to purchase milk in smaller containers—which is less cost-effective.

In another case, an agency was cited because one of the people living in the ICF/MR used a fork rather than a spoon to eat meat. This individual had a history of using no utensils and training was in place to address this. (This is a case where the paperwork was not reviewed by the surveyors when it should have been.) To address this citation, the agency hired another staff person to continually observe this individual at mealtimes—a costly response to the citation! A year later, the home was cited under the same tag number because the same individual ate bacon with a fork. According to the surveyor, the individual should have been directed to eat the bacon with his fingers since it was "crisp" bacon! The program called for the person to use appropriate utensils, and to later re-introduce finger foods. Again the paperwork was ignored when it should have been referenced to verify the plan before a citation was given.

ANCOR members routinely report that surveyors have a minimal understanding of people who experience challenging behaviors and how active treatment programs for these people are designed. Homes are frequently cited under this tag for incidents where the people who live in a home behave differently, even if no harmful outcomes occur. The survey protocol itself, with 3 or 4 surveyors in a home for 4 to 10 people can affect behavior, but this is seldom acknowledged by surveyors.

Another small ICFs/MR was cited under this tag number because three of the people who live in a home are on special diets and they were served pre-dished foods and pre-poured liquids rather than serving all food at the table family style.

Sometimes cultural and geographic norms are ignored by surveyors. For example, a home in Arkansas received a citation because a staff person called one of the people who lives in the home "Sweetie." This employee addresses the administrator of the home the same way. While this may



**42 CFR PART 483****Intermediate Care Facilities for People with Mental Retardation (ICFs/MR)****Page 7**

not be normative in some areas, it is pretty typical in the South and has nothing to do with whether a person is disabled or not.

Direct staff become discouraged when such incidents are cited. Some of the frustration which follows surveys undoubtedly increases the high turnover rate experienced in many ICFs/MR.

**W196 - Active Treatment standard** - This is another of those "catch-all" standards. Dr. Wayne Smith, the HCFA author of these rules, has defined active treatment like "good parenting." It is often taken far beyond that concept, however. Some surveyors imply that interventions should occur at frequent intervals, whether inappropriate behavior is occurring or not. For example: one home was cited because one of the people who lives in the home sat watching television for 20 minutes without attention from staff. In this case, it is the outcome which should have been judged (e.g., was the individual enjoying the program and watching without engaging in any inappropriate behavior?). People with developmental disabilities need time to relax and enjoy leisure activities without the need for intervention, just as the rest of us do. It is when they sit staring into space because they do not know how to use free time that a citation should occur. Sometimes, however, people will sit doing nothing for short periods. Some surveyors say that these should be no longer than 5-minute periods. That seems an unrealistic short period of time.

Some providers believe that the over implementation of this standard actually leads to an increase in negative behaviors due to the requirement for "continuous" active treatment. This is one of the most subjectively defined, misinterpreted and costly rules to implement.

**W198, W199 & W200 - 483.440(b) - Admissions, transfers and discharge** - leads to a review of whether the people served need active treatment. One member agency was cited for permitting the admission of an 18-year old who had lived with his family and attended public school before moving to the ICF/MR. The implication is that if you attend public school, you don't need ICF/MR support later in life. Federal education law encourages mainstreaming all students, no matter how severely disabled. People can go to public school, living at home, and still require active treatment in adulthood.

**W201- 483.440(b)(4)(I) - Have documentation in the [person's] record that [he or she] was transferred or discharged for good cause.** While this rule in itself is appropriate, it is applied when an individual moves to another ICF/MR operated by the same agency.

**W205 - 483.440(b)(4)(ii) - the requirement for a post-discharge plan of care is unrealistic** when it is accompanied by an expectation that there will be follow up to assure that it is implemented. ICFs/MR have little opportunity to maintain contact with people who are discharged, nor should they be responsible for assuring that a post-discharge plan is implemented when they are not paid for doing so.

**W210 - 483.440(c)(3)** which requires "accurate assessments or reassessments as needed" was originally surveyed only for need, but as time passes, there is more and more pressure—accompanied by more citations—to do complete evaluations in all professional areas identified in W216 through W225. Most of the problems with these tag numbers are caused by surveyor

misinterpretation of the rule and requiring excessive assessment.

**W214 - 483.440(c)(3)(iii) - Identify the [person's] specific developmental and behavioral management needs** - The detail expected results in the QMRP spending time planning the precise wording of the strengths and needs lists which could better be spent in planning for the individual. Examples of citations include: "Needs are expressed in global, imprecise terms and phrases which do not clearly communicate what the individual cannot do;" "client has needs which include 'increasing auditory skills,' 'improving toileting skills,' 'improve grooming skills.'" The IDT members are aware the specifics of these needs and develop goals and programs accordingly. More specific definitions and listing of what the individual cannot do is not necessary. Doing this tends to focus attention on tasks in which people have the fewest skills, rather than maximizing progress in areas of ability and interest.

**W229 - 483.440(c)(4)(I)**, which requires that active treatment: "[b]e stated separately, in terms of a single behavioral outcome," is being cited inappropriately in many current surveys, and with no relationship to outcomes. For example, one member agency was informed that the objective "pick up the cup and drink" was a double objective and should be stated as two separate objectives. The examples of citations provided for Tag number W159 were also cited under this rule. Surveyors focus on task analyses instead of teaching ways to support a person to engage in choice and activities that are meaningful to him/her which will enhance self-dependence.

**W230 - 483.440(c)(4)(ii)** requires the assignment of **projected completion dates**, which often has no relationship to outcomes, and nothing to do with health and safety of individuals. QMRPs and typists spend time each month writing, proofing and refiling amendments to the IP document just to update the expected completion dates. One agency has estimated that this could add as many as 60 hours per caseload per year.

**W234 - 483.440(C)(5)(I) - Each written training program designed to implement the objectives in the individual program plan must specify the methods to be used** - requires such specificity that staff attend more to the paperwork than to those who receive supports. Examples of citations include: (1) "The client is to turn his/her head with physical prompts when the staff calls his/her name. Methodology does not define physical prompts. It only states prompts and physical assistance." (2) "Client has a program . . . to wash his chest area with physical prompts when the wash cloth is placed inside of his left hand. Methodology does not define physical prompt. It only states to provide prompts to the left hand as needed." Citations such as these lead to the QMRP writing goals in greater detail than most staff probably bother to read, and to the QMRPs spending a lot of time agonizing over written detail when their time would be better spent training and observing the goal implementation and the individual's progress.

**W237 - 483.440(c)(5)(iv)**, which requires **data collection**, is an outmoded special education concept that is often irrelevant and time consuming, with no productive outcomes for the people receiving services. This rule has become an end in and of itself. It contradicts person-centeredness and can involve an inordinate amount of a QMRP's time, reducing direct contact with the people who receive supports and/or it is used as an excuse to avoid doing things with people to focus on paper. It is possible to document how a person is progressing in non-data laden ways. Task

analysis can be undertaken without measuring outcomes. Observation of an individual performing a task would provide a more accurate assessment of progress.

**W242 - 483.440(c)(6)(iii) - Include, for those clients who lack them, training in personal skills essential for privacy and independence . . .** is often over-interpreted by surveyors. There is also disagreement over how many skills can or should be addressed at one point in an individual's life. One surveyor insists that toileting can be broken down into 35 separate steps. He also refused to consider the incorporation of programs throughout the day during appropriate activities as adequate. He has stated that goals should be stated formally with data collection and monitoring by a professional.

**W252 - 483.440(e)(1) - Data . . . must be documented in measurable terms** is an outmoded special education concept, which results in penalizing staff for person-centered assistance. For example, if a person is clean and well-kept and wants to learn to brush his teeth, it should not be necessary to reduce this procedure to its individual steps and then record completion of those steps. When this is done, more time is spent in documentation than in training and observing behaviors. If one staff person works with three people over an eight-hour shift, a total of one hour can be spent by staff to record the outcome of the specific objectives, by the supervisor to check to book to see if the goals were documented properly, and by the QMRP to observe behavior to see if the task was performed exactly as the program was written. The usefulness of the information gathered is questionable. With a caseload of 8 people, an experienced QMRP spends about one third of his or her time in writing, reviewing and amending the plans which are not an accurate or likely indicator of active treatment services.

One member states: "We have storage boxes full of old yellow records that give up such valuable gems of information as, 'on May 17, 1988, [a person served] needed hand-over-hand assistance to brush his teeth.'"

**W311- 483.450(e)(2) - Drugs used for control of inappropriate behavior must be approved by the interdisciplinary team.** Conflicts arise when the professional opinion of the physician who prescribes a drug is questioned by the IDT. This can be a real issue in rural areas where

there are few physicians, particularly those willing to accept people whose services are paid by Medicaid.

**W312 - 483.450(e)(2) - Drugs used for control of inappropriate behavior must be used only as an integral part of the [individual's] program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors for which the drugs are employed.** This is an example of a situation where the "probes" are applied as though they were regulations, and contain more specificity than does the interpretive guidance.

**W313 - 483.4450(e)(3) - which requires that drugs used for control of inappropriate behavior . . . not be used until it can be justified that the harmful effects of the behavior clearly outweigh[s] the potentially harmful effects of the drugs** is over stated. This rule should be outcome based. If the drug is prescribed by the physician and approved by the IDT, if it is

**42 CFR PART 483****Intermediate Care Facilities for People with Mental Retardation (ICFs/MR)****Page 10**

working, the person is not lethargic and behaviors are improving, it should not be cited.

**W316 - 483.450(e)(4)(ii)** - which requires that drugs used for control of inappropriate behavior must be [g]radually withdrawn at least annually, raises problems when a drug used to control seizures is one also reduced behaviors. Providers have been told they had to have a behavioral program, appealed that citation and lost the appeal, and were inappropriately ordered to withdraw the drug. Drugs used for seizure control should be reevaluated annually, not withdrawn.

**W336 - 483.460(c)(3)** - requires that people who are certified as not needing a medical care plan have their health status reviewed by a nurse in a direct physical examination on a quarterly or more frequent basis. This is a costly requirement and an example of one for which HCFA data should be examined. It is important to know if this tag number is cited because the quarterly exams have not been conducted, or if health difficulties have been identified because they have not been conducted. The annual physical examination conducted by the physician should be adequate, with additional exams by an RN or LPN based on individual need at the recommendation of the physician. In today's world, health care is being reorganized with less emphasis on RNs. In fact, physician's assistants can, in some states, conduct the routine examinations once done only by MDs. QMRPs monitor physical health and staff are trained in signs and symptoms of disease. The overall quality of the ICF/MR should also be taken into consideration before such examinations are routinely required. If violations of this rule are not resulting in health issues for those served, this rule should be dropped. Outcomes should prevail.

This is a costly rule to implement, with staff costs in addition to the professional fees.

**W348-356 483.460(e) - Dental services** - are often over-regulated. After the admitting exam, this should not be enforced for people who do not have teeth. The mouth can be examined by the physician during the annual physical examination, or by the RN, with referral to a dentist if a problem is identified. It must also be pointed out that most states don't pay for dental services, despite the standard. The cost of implementation can be \$30 to \$60 per person a year.

**W362 - 483.460(j)(1)** - requires a drug regimen review by [a] pharmacist . . . at least quarterly. The annual physician review should be adequate. Today's computerized systems automatically indicate if the medication regimen is a concern. The pharmacy, physician and nurse should develop procedures ordered by the physician and reviewed by the IDT.

**W363 - 483.460(j)(2)** - The pharmacist must report any irregularities in clients' drug regimens to the prescribing physical and the interdisciplinary team. This is another paper requirement which may be unnecessary in terms of notifying the IDT, which is time consuming. One of our members was cited for having four different kinds of milk (regular, skim, 1% and 2%) in the refrigerator of an ICF/MR. It was felt that this required a physician's order.

**W383 - 483.460(1)(2)** - The issue of medication administration by unlicensed people needs to be resolved by states. This is frequently raised by providers but it is not a federal issue.



**42 CFR PART 483****Intermediate Care Facilities for People with Mental Retardation (ICFs/MR)****Page 11**

**W383 - 483.460(1)(2)** - The issue of medication administration by unlicensed people needs to be resolved by states. This is frequently raised by providers but it is not a federal issue.

**W405 - 483.460(n)(4)** - requires that [i]f the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved by the Medicare program. It is inappropriate to require the ICF/MR to make such assurances. Instead, the referring lab should be required to show proof that it is dealing with another certified lab. The ICF/MR should not be held responsible, but the separate survey of the laboratory should be used to identify violations of HCFA laboratory requirements.

**W432 - 483.470(f)(1)** requires [n]onabrasive carpeting, if the area used by [people who live in the home] is carpeted and serves [people] who lie on the floor to ambulate with parts of their bodies, other than feet, touching the floor. This regulation should be stated in terms of outcomes, (e.g., people will be free from avoidable abrasions) and it then would be up to the agency and staff to keep people free from abrasions. Is there such a thing as "non-abrasive carpeting?"

**W454 - 483.470** - the infection control standard - requires that [t]he facility must provide a sanitary environment to avoid sources and transmission of infections. Unreasonable interpretations occur but provide good examples of how inappropriately this rule is applied. For example, one surveyor turned a toaster upside down and shook crumbs out on the counter, using that as an example of a potential source of infection. In others, citations have occurred . . .

One member agency was required to have an "Infection Control Chairperson" monitor meals weekly to observe and document incidence of face touching and hand cleansing.

If people are healthy and the ICF/MR meets normal standards of cleanliness, there should be no citation.

**W461 - 483.480(a)(4)** - A qualified dietician must be employed either full-time, part-time, or on a consultant basis at the facility's discretion. The need for a dietician is less necessary than it once was since software programs have been designed to develop menus for both regular and special diets prescribed by physicians. These are, in fact, used by most dietitians to do menu planning. One ANCOR member was cited because individual documentation of nutritional intake was not in the dietician's reports. Agencies are paying about \$1,000 per year; sometimes much more, to contract with a dietician.

**W462 - 483.480(a)(1)** - If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services. Plans should be reviewed annually and as they change. QMRP should be capable of reviewing the plan. Reviewing data not people.

**W469 - 483.480(b)(1)(I)** - prohibits the passage of more than 14 hours between a substantial even meal and breakfast of the following day. This regulation is inappropriate when enforced strictly. It restricts people who like to sleep late on the weekend from having a late breakfast, or



**42 CFR PART 483****Intermediate Care Facilities for People with Mental Retardation (ICFs/MR)****Page 12**

skipping breakfast if they rise just before lunch. W470 and W471 also do not permit enough flexibility.

**W473 - 483.480(b)(ii)** - requires that food be served [a]t appropriate temperature. The regulation is appropriate but the probe is frequently treated like a rule and agencies are cited when food is served at anything that varies by as little as two degrees from 140 degrees. (One member was cited for serving a baked potato at a temperature of 137 degrees.) This is particularly ironic when one considers that water temperature is restricted to 110 degrees. People are therefore expected to eat food that is hotter than the water with which they wash their faces. The probe should be deleted.

**W478 - 483.480(c)(1)(ii)** requires the ICF/MR to [p]rovide a variety of foods at each meal - This rule is often interpreted unreasonably. For example, in a home for eight people, with six on special diets, the surveyor wanted choices presented for each person. In another, individualized salt and pepper shakers were required. There is a question as to what extent variety is required.

The rule does not assure quality and it is unnecessarily burdensome and costly to fully implement. Surveyors should instead determine if people are healthy. It is appropriate to observe a meal to see if people seem to be enjoying it.

**Application of the NFPA Life Safety Code** Depends upon fire marshal's interpretation. Agencies are now having to do things to older buildings that were not previously required and are confused regarding which are state issues and which relate to the ICF/MR rules.

**42 CFR 456.1-456.614 - Inspection of Care & Utilization Reviews** - These surveys are extraordinarily time consuming and costly. They are paper intensive, with every individual's record reviewed in great detail—at least in some states. Teams are required no matter how small the home and may spend days, weeks or months, depending on the size of the ICF/MR. Citations have been made for things such as the absence of a complete staff title; or the date on some document, the absence of which has no effect on outcomes for the people served.

ANCOR suggests that these be rolled into the regular ICF/MR survey, and that a random sample of the records be substituted for a review of each person's file. At a minimum, these should be focused on outcomes. Data should be kept regarding the number of inappropriate admissions that are found, with surveys targeted to the places where violations have occurred.

**Additional general comments:**

While most providers would agree that the 1988 standards improved the overall quality of services to persons with disabilities at the time they were implemented, they are quick to point out that much of the early flexibility and focus on outcomes that initially accompanied the new rules has been lost over time, and that compliance has come with a hefty price tag. Theories of service delivery have changed while the rules have not. "The last five years have been a time of deep and serious frustration over understanding the intent of the regulations and how to most effectively

implement them, the subjective nature of the surveys, the inconsistency between surveyors, the real and practical relevance of some of the regulations themselves and the skyrocketing costs which always follow each and every on-site visit from survey teams," one ANCOR member states.

The manner in which violations are sometimes cited can result in as many as 30 pages of deficiencies even when there are a few minor violations of the rules and there are no Conditions of Participation (CoPs) out of compliance. This results in a lengthy, time consuming (therefore costly) response as the ICF/MR has to address each statement individually, despite the fact that many relate to just one incident or relatively minor violation.

In addition, rather than labeling people with disabilities, as the rules are rewritten, we ask that HCFA drop the use of words like "client," or "consumer" throughout the standard and instead refer to "the people who live in an ICF/MR." This could be done immediately in new guidelines and surveyor reports.

**AMERICAN NETWORK OF COMMUNITY OPTIONS AND RESOURCES**  
**REGULATORY REFORM RECOMMENDATIONS**

**29 CFR §778.114**

**U.S. Department of Labor Rules Governing Overtime for Non-Exempt Employees**

**This rule requires excessive bookkeeping to compute overtime for hourly employees who do not work the same number of hours each workweek.**

Current federal rules at 29 CFR §778.114 prohibit employers from paying workers a fixed salary which includes some maximum number of hours of overtime — including the overtime premium. Instead, the wages must be computed weekly. When employees work a different number of overtime hours from one week to the next, this involves a great deal of bookkeeping. ANCOR proposes an alternative method of paying non-exempt employees. The method ANCOR suggests falls within the scope of the statute, but is prevented by federal regulation. It:

1. guarantees a salary employees can count on — which makes each employee's personal budgeting more secure — and actually pays people a little extra in the weeks when they work fewer hours;
2. maintains minimum wage and overtime protections for employees;
3. enables employers to more accurately budget expenses of operating a small human service business; and
4. reduces bookkeeping costs, thereby freeing up income which can be used to increase services to people supported by the agency, or to raise wages.

ANCOR represents more than 660 private agencies nationwide that together support more than 50,000 people with disabilities. About 85 percent of our members are nonprofit agencies. Traditionally, most of our members operate community residences and support people in their own homes. Most of the individuals supported by our members have mental retardation or another developmental disability, a traumatic head injury or, in some cases, mental illness. ANCOR members are small businesses with total annual income which ranges from — in most cases — less than \$500,000 to a few million dollars per year. Some larger agencies have higher operating budgets, depending on the number of people with disabilities they support and the types of services they provide. Most of the money member agencies receive is comprised of county, state and/or federal dollars. It is usually State government which controls the amount paid for each type of support; and pressure from government to keep costs down is high, particularly in today's economy.

It would simplify things tremendously if lower-paid workers could be paid on a salary basis

for a fluctuating number of hours worked from week to week — even when the time exceeds 40 hours per workweek — provided that the amount paid every week represents at least the minimum wage, plus

overtime for any hours over 40 worked in that workweek, for the maximum number of hours the employee is every expected to work. Under such a system, the employees would:

- continue to maintain records of hours actually worked,
- have to understand the actual hourly rate of pay on which the salary is based, and
- have to be paid overtime at that rate of pay in any workweek in which he or she worked more than the maximum number of hours represented by the regular salary.

For example: If an employee was paid on a \$5 per hour basis and routinely worked from 50 to 60 hours per week, s/he could be paid a salary of \$350 per week, regardless of the number of hours worked up to 60 hours a week. (This represents \$5 per hour for 40 hours and \$7.50 per hour for 20 hours.) Employees still would be required to keep a record of the actual hours worked each week and, under such an agreement, anytime the individual worked more than 60 hours, s/he would receive an additional \$7.50 for each extra hour worked. This provides a higher rate of pay than that achieved in calculations permitted by §778.114, which results in lowering the hourly rate of pay as more hours are worked in a workweek.

#### Labor Department Concerns Addressed

Labor officials believe that court decisions imply that overtime must be computed each week based on the actual number of hours worked. They cite the Missel case in making their argument. However, in that case, the court ruled that the overtime provision of the Fair Labor Standards Act had been violated because there was no discussion in the contract between the employer and the worker which addressed the rate the employee would be paid in a workweek when he worked *more* than the maximum number of hours on which his salary was based. If this matter *is* addressed in an agreement or a contract between an employer and a worker (i.e., if the agreement specifies the hourly rate of pay on which overtime will be based in workweeks in which the number of hours worked exceeds the maximum number on which the salary is based), then the Department's concerns should be eliminated.

This proposal represents the best of all worlds: it guarantees employees that they will receive a fair wage, including overtime protections of the FLSA; simplifies bookkeeping (thus reducing the employer's costs, freeing more money for services or for increasing employee wages); and enables employers to better project their costs of business.

**AMERICAN NETWORK OF COMMUNITY OPTIONS AND RESOURCES**  
**REGULATORY REFORM RECOMMENDATIONS**

**29 CFR §785.23**

**Letter of Interpretation of June 30, 1988**

**Department of Labor interpretation regarding sleep time creates hardship for employees.**

It is not unusual for employees who work in community residences supporting people with mental retardation and other developmental disabilities to be able to sleep at night when the people they support are asleep. In some cases, it is not necessary to pay those people for sleep time, provided that they can actually sleep during a regularly scheduled sleep period. Under federal interpretations of court decisions, the only times that people do not have to be paid for sleep time is when they either (1) work for 24 hours or more and have a regularly scheduled sleep period of up to eight hours within that 24-hour period, or (2) when they reside on the employer's premises. Circumstances governing those situations are described at 29 CFR Sections 785.22 and 785.23, respectively.

Section 785.23 applies to an employee who "resides on his employer's premises on a permanent basis or for extended periods of time," and permits any "reasonable agreement" between the employer and employee regarding exactly which hours are work time, which are sleep time and which are off-duty time. Prior to 1981, the U.S. Department of Labor had not defined what it means to be residing on the employer's premises for an extended period of time. Agencies which were providing support for people with mental retardation and other developmental disabilities in group residences were applying the provisions of §785.23 to situations where an employee worked at a group home for five days a week, sleeping there four or five nights. No formal policy defined those situations existed, however.

**1981 interpretation of residing on the premises for an extended period of time**

In February of 1981, the U.S. Department of Labor issued a letter of interpretation to the American Network of Community Options and Resources - ANCOR (then the National Association of Private Residential Facilities for the Mentally Retarded - NAPRFMR) and the National Association of State Directors of Developmental Disabilities Services - NASDDDS (then the National Association of State Mental Retardation Program Directors - NASMRPD) defining when an employee would be considered to be "residing on the employer's premises for an extended period of time" under Interpretive Bulletin 785.23.

That letter <sup>u</sup>says in part: "In general, we take the position that employees who reside on their employer's premises five days a week are considered to reside there 'for extended periods of time'. . . even though they may have another residence which they may regard as their principal residence." In addition, the letter states that the employer must provide a home-like



environment and private quarters for this policy to be in effect. The letter also indicates that off-duty time may be allowed for a few hours each day. Typical staffing patterns that resulted from that agreement include the one illustrated in attachment A.

#### **Employer questions raise concerns about possible loophole in the interpretation**

Over the next several years, Wage/Hour officials responded to questions from employers who wished to employ people under this enforcement policy and were seeking clarification of the policy. Some of the questions led Labor officials to believe that a loophole in the 1981 letter could lead to exploitation of employees. In a "worst case scenario" they envisioned an employer who would require an employee to be on duty from 10:00 p.m. to 8:00 a.m. (10 consecutive hours) five days a week, but paying those people for only two hours in each 24-hour period, since up to eight hours of bona fide sleep time need not be compensated. (See attachment B.)

#### **1988 enforcement policy designed to close loophole**

To close this loophole and to clarify other questions which had arisen about the 1981 policy, a new enforcement policy was released on June 30, 1988. It required that employees who work under the policy be "full-time employees." Unfortunately, another restrictive provision was added at the same time. This requires not only that the employees be full-time employees, but that "the employee is on duty at the group home and is compensated for at least eight hours in each of five consecutive 24-hour periods." Examples of staffing patterns which comply with this requirement were described in the letter. They are represented in attachments C and D.

#### **Eight hour per 24-hour period requirement creates unnecessary overtime, causing a hardship for employees**

ANCOR has no quarrel with the full-time employment requirement. In fact, most employees who reside on the premises for an extended period of time work more than 40 hours per week. That is, in fact, the problem with the new requirement. Since most employees must work *more* than eight hours in order to be at the home when the people who live there are back from their daytime education, training or employment programs, employees are forced by the policy to work a considerable amount of overtime each workweek. Requirements of the home result in staffing patterns like that found in attachment E.

Employees would prefer to work fewer hours each week, and employers in our field would like to permit them to do so because it means that the employees have greater job satisfaction, are more productive workers and stay in their jobs longer. To do this however, the June 1988 enforcement policy would have to be revised, retaining the full-time requirement, but dropping the requirement that employees be on duty and compensated for at least eight hours in each of five consecutive 24-hour periods, as cited in paragraph (1) on page 3.

ANCOR requests therefore that the 1988 policy be amended by dropping paragraph (1) on page 3 of the policy, thereby deleting the eight hour per 24-hour period requirement.

## AMERICAN NETWORK OF COMMUNITY OPTIONS AND RESOURCES

## REGULATORY RECOMMENDATIONS

**29 CFR Part 825****Department of Labor, Wage and Hour Division**  
**Family and Medical Leave Act**

ANCOR is raising an issue for clarification under the Family and Medical Leave Act (FMLA). The issue for clarification concerns the threshold for reaching the definition of "covered employer" and the definition of "employee" as the later definition relates to "clients" who are receiving training in rehabilitation programs or work centers.

A "covered employer" under the FMLA is one *who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar*. Both full-time and part-time employees who are on the employer's payroll are to be included in the aggregate number of employees to meet the 50-employee threshold.

It is the understanding of ANCOR members that the DOL includes "clients" of rehabilitation training services within the aggregate number of "employees" deemed to reach the 50-employee threshold for purposes of the FMLA. However, this interpretation appears inconsistent with other federal rulings governing an "employer-employee relationship."

Providers of supports and services to people with disabilities may also provide diagnostic and evaluation services, counseling and training services to people with disabilities as part of a rehabilitation program designed to prepare them for placement in private industry. The purpose is to accustom the individual to working conditions. As "clients" of the rehabilitation program, the individuals in training receive certain allowances during this training period, but are not eligible for the benefits which are available to recognized employees of the community rehabilitation center.

**IRS Revenue Ruling 65-165**

Under IRS Revenue Ruling 65-165 (2931.3121(d)-1 Who are employees?), the IRS was asked to determine whether people who were blind and who were receiving rehabilitation services in a "sheltered workshop" were employees of the 501(c)(3) organization. The revenue ruling defined three classes of individuals and separately discussed the employment status of each class. The IRS clearly made a distinction between those individuals who were in a training period and "individuals who had completed the training and who either continue to work in the workshop temporarily while awaiting placement in private industry or permanently if they are unable to compete in regular industry." **The revenue ruling held that the former individuals were not employees**, while those individuals in the latter instance were employees of the organization.

Using the IRS revenue ruling, there may be both "clients" and "employees" in the same

rehabilitation facility or training center at the same instance. Furthermore, the DOL "certificate for sub-minimum wage" in sheltered workshops would appear to also modify the "employment relationship."

The FMLA regulations do not address this apparent inconsistency in federal interpretations of "employee" that exists between the Department of Labor and the Internal Revenue Service. **ANCOR recommends that the Department revisit the definition of employee and under the circumstances allowed under the IRS Revenue Ruling 65-165, exclude individuals who are "clients" in a rehabilitation facility or training center from the aggregate number of people that determines the 50-employee threshold for purposes of FMLA. These individuals do not meet the employee-employer test and should not be counted toward the "employee" threshold to determine "covered employers."**

## AMERICAN NETWORK OF COMMUNITY OPTIONS AND RESOURCES

## REGULATORY REFORM RECOMMENDATIONS

## Occupational Safety and Health Administration

## Introduction

ANCOR members are deeply concerned about protecting the health and safety of their employees. Providing supports and services to people with disabilities in their own homes and apartments, in group homes, and intermediate care facilities for people with mental retardation (ICFs/MR—funded through Medicaid) is labor intensive. It would be counterproductive to be cavalier about employee health and safety issues or abandon the responsibility of protecting these employers' most valuable resources—human resources.

ANCOR members are increasingly finding that their agencies are subject (frequently only after an OSHA inspection, citation and fine), to a host of general health and safety standards for which the employer is unaware. Rather than a violation of flagrant disregard for health and safety issues, ANCOR members are faced with voluminous health and safety standards developed with no eye to the nature of business carried out by these human service agencies.

OSHA has become increasingly active in workplaces other than traditional manufacturing, construction, and maritime industries. This foray into new workplaces has not been with concomitant understanding of these new work environments, with the result that OSHA applies many of its standards across industries. OSHA is not required to develop these standards based upon a cost-benefit analysis that determines the degree of risk involved and the cost of alleviating that risk in different industries. Neither has OSHA developed these standards consistent with industry-specific workplaces nor included industry-specific leaders from the various workplaces in the formulation of new standards. So, for example, standards that apply to hospitals will be uniformly (and, laboring under misinformation or little information) applied equally to such different workplaces as those where employees provide supports and services in private homes where people with disabilities live.

## New White House Approach

ANCOR is, therefore, encouraged by the recent White House announcement of a "whole new mind-set for OSHA." Without knowing any more details than those chronicled in the *Washington Post* on May 16, 1995, ANCOR is most receptive to the two White House goals explicit in the new OSHA "mind-set:" "increase the protection of worker health and safety, while decreasing red tape and paperwork."

The White House announcement of a new approach to workplace safety inspections that "focuses on the worst offenders while relying primarily on voluntary compliance with federal health and safety rules for much of the rest of the nation's employers" would be a much improved approach.

Not only have the regulations increased “red-tape,” but the OSHA inspections have taken on a “ticket writing” approach with heavy fines to “fix” questionable “risks.” OSHA needs to go beyond this to reduce burdensome requirements and red-tape where the risk does not warrant time-consuming, costly, and burdensome standards which are frequently interpreted in an impossibly strict manner.

### **Life Carries Some Degree of Risk**

ANCOR members often find themselves in the untenable position of protecting employees from little or no real health or safety risk at the expense of their primary mission. ANCOR members have a responsibility to the people to whom they provide supports and services to live self-dependent, productive lives in the community. With a serious eye to the health and safety of employees, this primary charge regarding people with disabilities must not be undermined. Not only have employers questioned the aims of many of the OSHA standards when applied to the field of disabilities, but employees have questioned many of the underlying assumptions when regulations and inconsistent interpretative applications fly in the face of historic struggles by people with disabilities to achieve “normalized” living in the community.

Increasingly, the supports and services provided by ANCOR members are provided in homes that resemble the homes occupied by employees at OSHA, by members of Congress, and by all other Americans. Yet, many of OSHA’s requirements are applied in a manner that is intrusive, restricts the choice of people with disabilities, and de-humanizes the necessarily sensitive relationship established between the person with a disability and the individual(s) that provide supports and services. In other words, the same standards and regulations are not applied to the homes of most Americans.

In addition, the voluminous standards and regulations subvert staff time and fiscal resources away from the delivery of quality supports and services to people with disabilities. In many cases, these standards force ANCOR members to guard against phantom health and safety risks and divert resources away from the primary customer—people with disabilities—without the means available to other employers to pass along the increased costs to their “customers.” (The cost of doing business for most ANCOR members is directly tied to established federal and state allocations for supports and services.)

ANCOR members abide by a principle of “normalization” in supporting opportunities for people with disabilities to live and work and play within America’s neighborhoods and communities. This principle includes the “dignity of risk.” This means that living in the community and life in a free society carries some risk. While protecting America’s workforce is a laudable goal, it is impossible to protect people from every conceivable risk that might raise some level of health or safety concern. Employees should have some responsibility for controlling the risks in their lives, based on informed choices.



Some degree of risk is inherent with any undertaking. None of us are free from risk—even walking to work could result in a serious accident or death. Increasingly, workplace violence has introduced a new risk to workers in such seemingly “non-risky” workplaces as McDonald’s and the U.S. Post Office. And, as the nation has all too unfortunately experienced recently, even working in a federal office building can carry grave risk.

ANCOR recommends that OSHA approach work sites like those in which ANCOR member employees work with a common sense approach to the “risk” of occupational health and safety issues based upon the specific industry. This would include a knowledge about the industry’s real employee duties and not an assumption based upon other industries, for example, hospitals and medical units.

#### **Recommended Guiding Principles:**

To this end, ANCOR offers several guiding principles to re-focus the efforts of OSHA:

- *OSHA should be a resource for business—not a government strong arm.* Much more could be done to protect the real health and safety of America’s employees if OSHA performed as the repository for information and functioned as the resource for “helping” employers achieve safe working environments, rather than working to find “fault” and proceeding with a “gotcha” attitude, without regard to the intent and extent of employer efforts to provide a work environment that meets sensible health and safety protections.

- *OSHA should develop “outcome based” standards, providing employers with information needed to meet the outcome, but giving employers the flexibility to meet that outcome with whatever measures they deem necessary.* If OSHA develops a standard that it states is “outcome based” and not prescriptive (for example, as with the bloodborne standard), then OSHA should provide employers with the information needed to meet the outcome envisioned by the agency. If OSHA can not provide clarity to employers regarding a specific risk in a standard, then the employer should be free to develop cost-effective abatement measures and not be penalized because a compliance officer’s interpretation holds there to be a “better”—and often, unnecessarily more costly and less efficient—approach to take.

- *With a re-focused mission, OSHA could devote its resources to providing written materials and direct training to industry leaders and employers on industry specific health and safety issues.*

- *OSHA should focus on those industries with the worst health and safety records; i.e., examine workers’ compensation claims as a means to identify employers where employees are at genuine risk.*

- *OSHA should develop the expertise, after consulting with recognized industry leaders and employees in each field, about what constitute major health and safety risks for that industry.*

In developing these standards, these industry leaders should “weigh” into the formula of what constitutes reasonable costs to ameliorate the identified risks.

• *OSHA inspections of employer sites within each specific industry, should then focus on those limited health and safety concerns identified for that industry that pose genuine risks.*

• *OSHA inspections should focus on voluntary compliance of employers to “fix” infractions when they are discovered.* That is, agreement to participate in a plan to reduce the hazards, utilizing OSHA’s expertise to address the health or safety *dangers*. Citations and fines should only be used as a last resort when employers fail to develop a plan that meets with established “industry-wide” practices.

• *The overall range of OSHA’s fines should be reduced.* Higher fines should only be levied in the absence of a good faith effort and flagrant disregard for genuine health and safety violations.

• *OSHA should eliminate penalties (fines) for “deficiencies” where employers have shown good faith efforts to comply with specific health and safety standards.* For example, when employers have a hazard communications plan in place, have a bloodborne pathogens exposure plan, and have a general safety plan in place, OSHA inspections should focus on “ways to improve” the plan when a genuine risk is discovered—rather than looking for any and all possible “violations” and issuing a citation and fine for smaller, incremental components of a standard.

In addition to the above general comments, ANCOR is providing specific comments on two OSHA standards—*Hazard Communication* and *Bloodborne Pathogens*—and general comments on pending regulations—*Indoor Air Quality* and *Ergonomics*.

**49 CFR Part 1910.1200****Hazard Communication Standard**

In 1992, OSHA documented that there are an estimated 575,000 existing chemical products, and hundreds of new ones being introduced annually, that pose a serious problem for exposed workers. To combat the "seriousness" of safety and health problems as a result of exposure to chemicals, OSHA adopted a rule called "Hazard Communication." The "basic goal of the standard is to be sure employers and employees know about work hazards and how to protect themselves" in order "to reduce the incidence of chemical source illness and injury."

Under this standard, all chemical manufactures and importers must convey the hazard information they learn from their evaluations by means of labels on containers and material safety data sheets (MSDS). *In addition, all covered employers must have a hazard communication program to get this information to their employees through labels on containers, MSDSs, and training. The coverage of this standard extends to all industries.* OSHA makes no distinction as to size or "low hazard" industries.

The requirement to obtain and file MSDS forms and forward information and training to employees includes *consumer products*—common household products that are used by all American households—under certain circumstances. OSHA determined that workers exposed to "hazardous chemicals" in consumer products are at a significant risk of experiencing adverse health effects and holds the employer responsible for an employee using the products in a manner not anticipated by the chemical manufacturer or using them in such a way that the exposures are more substantial (e.g., quantity used, frequency used, and usage over an extended period of time) than those consumers would normally experience.

**Issue Consumer Household Product [(b)(6)(ix)]:** OSHA exempts consumer products or hazardous substances as follows:

Any consumer product or hazardous substances, as those terms are defined by the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, *where the employer can show that it is used in the workplace for the purposes intended by the chemical manufacturer or importer of the product, and the use results in a duration and frequency of exposure which is not greater than the range of exposures that could reasonably be experienced by consumers when used for the purpose intend;* [Emphasis added.]

OSHA's MSDS requirement as defined above poses a significant problem for ANCOR member agencies. ANCOR work sites are not factories, foundries, nor manufacturing plants; rather individualized homes and apartments, group homes and other congregate living environments subject to numerous other federal regulations (see section on ICFs/MR) that provide living arrangements for people with disabilities in a "normalized" environment.

The household products are those common consumer products purchased off of grocery and

hardware shelves which are required by other regulations to print information about content and risks on the containers. They are used following the same instructions as those presented to other consumers and used in homes across the nation. The only difference is that the product *may* be used more often in a day with more than one application of a product because employees provide supports and services to more than one individual with a disability and in multiple workplaces.

#### **Deodorants, Hair Shampoo, and Dove Soap?**

Thus ANCOR members must keep MSDSs on such consumer household products as shaving cream, deodorants, salon hair shampoo, dishwashing liquids, laundry soaps and fabric softener, Windex, thinner for liquid paper correction fluid, and common household cleaners. Because many of these products come in varied forms—liquid or powder—multiple MSDS sheets must be maintained on the same product. Attached are lists submitted by three ANCOR member to serve as examples of the kinds of products for which MSDS sheets are kept on file. One list contains over 160 household products, each of which can be purchased at K-Mart or WalMart retailers or any grocery store. [See OSHA Appendices A, B, and C.]

**These lists are comprised of household products that could be found in any home in America, including the White House, those of members of Congress, and employees of OSHA. Yet Americans who use these products in their own homes are not required to file MSDS forms or receive extensive training on their use. However, the homes of people with disabilities are not so equally treated. Because *paid* assistants use these products in conjunction with meeting personal assistance needs, performing routine household chores such as preparing meals and cleaning kitchens and bathrooms, or teaching people with disabilities who live in their homes to manage their own daily personal hygiene and households chores, extensive recordkeeping and training is required of ANCOR employers.**

These same products are used daily in homes across the nation, but, according to OSHA, represent a hazard when the workplace is a home for people with disabilities. For example, because ANCOR member employees use a personal hygiene product with more than one person with a disability, or assist more than one person with a disability to use such a product each day (constituting greater frequency) or clean kitchen or dining rooms following each meal preparation or clean bathrooms daily to meet other quality control standards (constituting frequency and duration), the OSHA MSDS forms and training must ensue.

Given that these same household products are used by mainstream Americans in their own homes, contain required labels for proper use and instructions regarding risk when used, and considering that other consumers are not required to maintain MSDS forms or complete training when using these products, the OSHA standard places a heavy burden on the nation's employers of supports and services to people with disabilities not otherwise required by other consumers of these same products.

### Cost

It is difficult to provide a typical cost base for complying with this standard. However, consider the follow examples from ANCOR members of costs associated with meeting OSHA's Hazard Communication standard:

1. Cost of training video = \$1,000.
2. Employee training (320 employees at 1 hour of training away from direct staff duties computed at minimum wage per hour) = \$1,500 annually.
3. Cost of purchasing agent time devoted to requesting, receiving, and routing MSDS sheets to multiple home sites (at 10% of \$20,130 annual salary) = \$2,013. Another ANCOR member reports that the agency has hired a health safety specialist who spends 25%-30% of work time on the MSDS requirement.
4. One member reported that her agency spent over \$12,000 obtaining MSDSs on all products used in the group homes administered by her agency, photocopying those MSDSs, placing them in large 3-ring binders and then putting a binder in each group home.
5. Another agency estimated the initial set up cost of between \$12,000-\$15,000 in labor costs. This expense does not include the cost of duplicating additional forms and transmitting them to individual residential settings, nor the annual costs of training staff on "chemical hazards" in the workplace.

There are additional burdens added to meeting this standard when a physician orders a specific product for a person with a disability, for example, daily use of dove soap for severe skin problems. This kind of physician's order happens frequently with soaps, powders, and lotions. The agency may have to wait 3-4 weeks to start using the new product until the MSDS sheet arrives and is then placed in the individual's home. **In order to comply with the OSHA standard, the employer must assume responsibility for not complying with the physician's order in a timely manner.**

*How critical is the information contained on an MSDS that does not appear on the label of a product? When people get consumer cleaners, cosmetics, etc. in their eyes, do they read the MSDSs or the label on the container in their hand? Are MSDSs really being used in a practical way?*

**Outside Contracts [(e)(2)]:** If an employer contracts with an outside business, the employer must obtain MSDS forms from the outside contractor. So, for example, if an agency contacts a plumber late at night to fix a plumbing problem, the agency must first ask for the contractor's MSDS forms. This would hold true for other household services such as painting or pest control. However, there is no similar requirement when these services are brought into the homes of other Americans.

### ANCOR Recommendations Regarding Hazard Communication Standard

1. OSHA should differentiate between serious chemicals hazards and products that do not pose a serious hazard (do not pose a significant illness or injury) when used by the general public. Criteria



should also include use of products purchased in typical grocery and other retail stores for the purpose of household use and for which there is no training required if used by public consumers at large.

2. Eliminate the MSDS requirements and training for household products used by public consumers.
3. Eliminate the MSDS requirement and training for employees who provide supports to people in their own homes.
4. Eliminate the requirement that an employer obtain MSDS forms for outside contractors.
5. Develop an outcome-based criteria that requires general training on hazardous chemicals and employee instructions to seek medical care when exposed to a hazard.

**49 CFR Part 1910.1300****Bloodborne Pathogens Standard**

OSHA's bloodborne pathogens standard was issued three years ago to protect all workers from occupational exposure to bloodborne pathogens, including Hepatitis B Virus (HBV), the Human Immunodeficiency Virus (HIV), and other bloodborne pathogens which can cause serious and deadly disease. The issuance of this standard and the scope of coverage—including residential programs where people with disabilities live—not only surprised our membership, but signaled the encroaching role of OSHA into the field of disabilities. This standard has also brought on the greatest controversy and concern to ANCOR members over unnecessary costs. The lack of clarity over the standard's abatement requirements and varied citations indicating inconsistent application in the field eventually led ANCOR to seek Congressional intervention to obtain a meeting with OSHA officials.

ANCOR members want to protect their employees from occupational exposure to serious illness and deadly disease. There is no quarrel with practicing reasonable precautions (for example, effective training and the use of universal precautions). It is wise for employers and employees alike to be as careful and cautious as possible. ANCOR's issue with this standard relates to the degree of risk involved, the unreasonable scope and coverage of the standard as applied by OSHA.

**Degree of Risk of Transmission Questioned**

ANCOR has always questioned the likelihood of risk of transmission explicit and implicit in OSHA's standard and the onerous and costly precautions given the nature of the duties and tasks carried out by providers of supports and services to people with disabilities. To our knowledge, there has been not one documented case of transmission of Hepatitis or HIV/AIDS between staff or from a person receiving services to an employee.

It has been reported to ANCOR that 400 people die annually from Hepatitis B. This rate pales in comparison to those individuals who die from AIDS, cancer, diabetes, etc. To prevent the transmission of Hepatitis B with that level of death rate, our industry spends millions of dollars annually. ANCOR seriously questions OSHA's burdensome and costly requirements (vaccinations, thirty year record-keeping, waste disposal, and excessive personal protective equipment), and the agency's overly strict interpretations of these requirements in the face of the risk presented in providing supports and services to people with disabilities where they live.

The costs involved are not only borne by employers (reflected in direct fiscal outlays and employee resources), but also by employees in the time devoted to meeting the requirements, and—most importantly—by people with disabilities. The intrusive and excessive personal protective equipment and precautions related to the genuine risk de-humanize the relationship between the person providing supports and the person with a disability. They also adversely affect the choice to lead “normalized” lives in the community. While sound and reasonable health practices must be provided to protect workers, as well as people to whom supports are provided, this standard and OSHA's application goes beyond the need of the risk presented.

There is as yet no vaccination for the HIV/AIDS virus and, at the current time the result of contracting this disease is death. Prevention of this deadly disease is one in which ANCOR supports our nation's efforts. Although the risk of transmitting HIV/AIDS leads to a more serious ultimate end than the transmission of Hepatitis B, the transmission of this disease is different than that of Hepatitis B. There have been no reported transmissions of the disease except through sexual contact, sharing of hypodermic needles by people using drugs, blood infusions during surgical/medical care, and the one as yet unconfirmed transmission occurring in a dentist's office. Employer responsibility for preventing the transmission of this disease should follow from the known medical demonstrations of its transmission pattern.

### Coverage and Scope Too Broad

The current bloodborne pathogens standard requires that all workers with reasonable anticipation of occupational exposure to certain body fluids (blood, semen and vaginal fluids as well as vomitus, feces and urine and saliva that is mixed with blood) must exercise "universal precautions" (an approach which presumes that there may be bloodborne pathogens in any body fluids). It also requires that such workers be provided appropriate personal protective equipment (e.g., gloves and goggles), and receive the three-shot series of Hepatitis B vaccinations. Employers must offer the vaccination to employees regardless of following universal precautions, utilizing appropriate personal protective equipment (PPE), or any other abatement measures.

OSHA's current interpretation of coverage to workers with "reasonable anticipation of occupational exposure" includes duties beyond medical, surgical and health care activities that occur with traditional hospital, physician, dental, and emergency response "health care" treatment. OSHA's coverage extends to workers in group homes and other congregate living arrangements and private homes which provide personal assistance, housekeeping duties and enhance habilitation and vocational skills for and with people with disabilities. Examples of some of the activities for which OSHA has issued citations and fines or indicated coverage include:

- \*toothbrushing (because blood may occur with daily teeth cleaning);
- \*bed linens (handling, bagging and labeling as hazardous waste materials because they "may be" contaminated with semen or vaginal fluids);
- \*bathing or feeding (where a person has a history of biting or scratching);
- \*toileting

Due to this coverage, people with disabilities living in group homes and private homes are now subjected to living, working, and playing in anything but a "normalized" community environment. They are quite literally treated with "kid gloves." As the attached photograph demonstrates, people with disabilities may find their personal care attendant or direct care worker dressed for "a moon walk." [Appendix D from Minnesota newspaper.] This provides a living environment which is anything but individualized, personal, and homelike. Instead, it returns people with disabilities to an era in which their condition was treated as a medical one and they live in a "hospital-like" environment.

**Hepatitis B Vaccinations (29 CFR 1910.1030 (f)(2)(I) and (g)(2)(vii))****Access and Cost**

Due to the coverage of these activities, employers must provide **within 10 days** of work assignment and at no expense to workers, the Hepatitis B vaccination series. For workers who provide "first aid" (including applying a band-aid or supplying a Kleenex for a bloody nose) only as an ancillary duty and who do provide "first aid" relative to an incident, they must receive the first of the 3-shot vaccination series **within 24 hours** of providing first aid, regardless of whether or not there was any exposure to bloodborne pathogens.

The availability of vaccinations is particularly difficult in rural areas where clinics may only be open to provide vaccinations every thirty days. Therefore, agencies must have access to an emergency supply of the vaccine and appropriate medical personnel within 24 hours (even during weekends) for the purpose of possible post-exposure protection if simple first aid is provided. Some agencies have had to rely on the local emergency rooms of hospitals to provide the post exposure vaccination in order to comply with the 24 hour deadline, thereby taxing the existing health care system.

The cost of this vaccination varies and, at times, is not readily available in the community. The cost of the Hepatitis B vaccine varies ranges from \$125-\$350 for the complete three-shot series—depending upon the geographic area and contractual arrangements with local private medical personal. ANCOR has repeatedly advocated with the Congress that the hepatitis vaccination be made available at no cost or at federally contracted rates as part of our nation's immunization program (for example, through childhood and other immunization programs and the public health program to public non-profit entities) to agencies that provide supports and services to people with disabilities.

However, ANCOR providers must continue to meet this requirement without the benefit of any such immunization program and receive no additional reimbursement for the cost of the vaccinations, but must include the cost of meeting this vaccination requirement and the other bloodborne standard requirements with the established federal and state allocation. In order to avoid OSHA citations and costly penalties, many agencies have taken the steps to offer the vaccination to all employees who have *any responsibility or contact* with a person with a disability.

Examples of the added costs of this standard include:

- One non-profit agency which provides day, residential, and community services to 200 people with disabilities reported an initial cost of \$4,000 for the vaccination. Considering that the same agency reports a 50% turnover rate for its staff, the cost of the vaccinations continue each year relative to the loss of staff.
- Another agency providing services to 250 people with disabilities reported an initial cost of \$10,000 for the Hepatitis B requirement. Depending on how broadly the requirement is extended to other services, it reports that the cost could go up to \$70,000 annually (or \$326 per person being served.)
- One agency that employs 325 full- and part-time staff to provide supports to nearly 300 people with

mental retardation and mental illness in group homes, supervised apartments, and private homes and apartments, reported that in the first year following the effective date of this standard, the cost to vaccinate those staff who were offered the vaccination (approximately 60% elected the option) totaled \$25,000. If the employer vaccinated all staff the cost would be \$62,400.

- One agency received an OSHA citation for failure to offer the pre-exposure vaccination to staff even though the employer had contacted the public bureau of health immunization and was told that it was ineligible for the vaccine and after referral to the vaccine distributor who never returned phone messages.

- Another agency that employs 360 staff reports an annual cost of implementing the bloodborne standard at \$50,000. The employer averages 410 injections per year at a cost of \$49.10 per injection for an annual cost of \$20,150. To date, the agency estimates that providing the Hepatitis B vaccine (2,052 injections since the effective date of the standard) has cost \$100,753. This cost does not include that of nursing time involved in administering the injections, ordering vaccine and recordkeeping. The annual nursing costs (estimated at 10 minutes per injection) add an additional \$735 to the cost of the vaccine.

#### **Personal Protective Equipment (PPE) (29 CFR 1910.1030 (d)(3) )**

OSHA's bloodborne standard also requires that employers provide employees with appropriate PPE (gloves, goggles, gowns, etc.). As the photograph demonstrates [Appendix D from Minnesota newspaper], the extent of the PPE varies and so does the cost of meeting this requirement. Providers report that people with disabilities are "frightened" by someone approaching them with goggles and a mask to help them with brushing their teeth.

One agency received an OSHA citation for not using rubber gloves while bathing a person with a disability, when the worker was using latex, disposable gloves. The agency was told that if you are assisting a person with bathing you must wear special bathing gloves ("nitro" gloves) that extend up the arm. The cost of the gloves are between \$9-\$15 and are the same gloves as those used for chemical exposure. These gloves are not soft and are slippery when wet, thereby inhibiting comfort and safety.

#### **Cost of PPE**

Examples of the cost of PPE include:

- One agency estimated the one time cost of CPR masks at \$1,920 and blood-spill kits at \$800. It estimates annual costs of \$9,000 for rubber gloves.
- One agency estimated the annual cost of rubber gloves to be \$1,913.
- Another agency estimate the annual cost of rubber gloves to be \$2,603.

The above cost data does not include costs involved with infection control training. One agency estimates an annual cost of \$1,617 for the trainer and \$6,648 for the staff time to attend training.

#### **ANCOR Recommendations for Bloodborne Pathogens Standard**



1. **OSHA should revisit the standard with a serious review of the benefit and cost of risk involved.** OSHA should revisit the standard on an industry by industry basis and develop industry-specific requirements related to the vaccination, personal equipment, and waste disposal requirements. OSHA should consult industry-specific leaders and workers as to the risk involved and the best and most reasonable precautions.
3. **Elimination of the 30-year recordkeeping requirement.** Even the Internal Revenue Service does not anticipate a 30-year recordkeeping practice. The rationale and cost of storing training and medical records pursuant to this standard is unreasonable. Employees must also assume some responsibility in maintaining their own medical and training records.
3. **Recognize good faith efforts and reduce citations for minor infractions.** Where employers have an exposure control plan in place and have made a good faith effort to comply overall with the standard, the focus of OSHA inspections should be focused on correcting "deficiencies" where genuine risks are involved and "improving" plan components, rather than issuing citations and fines for each and every incremental aspect of a standard. The emphasis should be on helping those employers who make an honest effort to meet the spirit of the standard and citing willful violators who ignore genuine health risks as opposed to "catching" and "penalizing" good citizens.

**AMERICAN NETWORK OF COMMUNITY OPTIONS AND RESOURCES****REGULATORY RECOMMENDATIONS****Occupational Safety and Health Administration****Pending Standards**

Increasingly, people with disabilities are living in the community in their own homes or apartments, supervised apartments, group homes and other supported living arrangements. These are real "homes" to people with disabilities—environments which are not considered workplaces by the people who live in them. While providers of these supports and services have a keen interest in maintaining healthy and well trained employees to provide these supports wherever people live, work, and play, it must also be remembered that providers have a primary responsibility to people with disabilities to enhance the quality of their lives.

ANCOR would like to take this opportunity to recommend that OSHA exercise both care and clarity in formulating standards in the following areas:

- Tuberculosis
- Indoor Air Quality
- Ergonomics

OSHA is in very stages of developing proposed or promulgating final standards regarding the above areas. Although all three areas may involve some degree of risk of injury or illness to employees in various workplaces, OSHA should develop standards which are industry-specific, taking into account the genuine risks involved in specific workplaces as well as the cost to employers for reducing risk.

Following the promulgation of new standards, OSHA resources should be devoted primarily to helping employees meet health and safety outcomes. An OSHA that is available to help employers provide a reasonably healthy and safe environment in which employees can carry out their responsibilities to enhance the lives of people with disabilities would be a better use of limited federal resources—as well as that of federal and state resources allocated to providers—than penalizing the efforts of good faith citizens. A common sense approach to health and safety, rather than a government strong arm enforcing volumes of regulatory red-tape is needed.

Revised 1/95

HAZARDOUS SUBSTANCE LISTPRODUCT

A-33 Dry

AFBC

Alcare foamed alcohol

Aqua Soft

Bleach

Bissell 4-in-one carpet formula

Brake fluid (heavy duty DOT)

Cascade

Cepacol

Charcoal lighter fluid (Kroger &amp; Kingsford)

Chem-tox do it yourself pest control

Colgate instant shave cream

Colorworks

Comet cleanser

*Liquid Comet*

Conquer disinfectant deodorant

Dawn

Dial Antibacterial Soap

Decorator Paints

Duco spray adhesive

Easy-off oven cleaner (heavy duty)

Elmer's carpenter wood glue

Fantastik

**HAZARDOUS SUBSTANCE LIST - Continued**  
**PAGE 2**

Fire Extinguisher (Dry Chemical - General)

Floor cleaner (Armstrong)

Floor polish (Armstrong)

Formula 409

Fresh & Clean Disinfectant

Fuse (flare) Highway

Glade Carpet & Room deodorizer

Hollister Medical Antiseptic Spray

Hydrogen peroxide Hollister Skin Bleach

Jet Dry

Joint Compound

Kleerunaster Brilliantize

Lacquer thinner (Klean Strip)

Laser Printer Toner (Dry Toner)

Latex flat (Moorcraft)

Latex semi-gloss enamel (Moorcraft)

Laundri Destainer

Lemon 3-D

Lemon polish (Clark)

Limeaway

Liquid nails (Macco)

Liquid paper correction fluid

Lysol Room Spray

Mikroklene

Murphy's Oil soap

**HAZARDOUS SUBSTANCE LIST - Continued**  
**PAGE 3**

Motor Oil (Valvoline 10W40)

Odor destroyer

Old English scratch cover (for dark wood)

Paint thinner (Klean-Strip)

Plasti Dip

PMR Primer

Polyurethane

Puncture Seal

Raid Ant & Roach Killer

Raid Max Roach & Ant

Resolve Carpet Cleaner

Roto-Rooter Drain Cleaner

Rubber Cement (Ross)

Rust Tough

Sani-Soft Hand Cleaner

Scotchguard carpet protector

Scotchguard fabric protector

Shout (aerosol)

Shout (liquid)

Silicone rubber sealant

Skin Barrier Lotion

Snap starting fluid

Spic & Span

Spot Rem



00-10-1000 00-20-10 FROM

TO

ANCOR P. 14

TOTAL P. 07

**HAZARDOUS SUBSTANCE LIST - Continued  
PAGE 4**

Stanley Steamer Carpet &amp; Upholstery Spot Remover

STP vinyl protectant

Steele Brits

Tile Pro High Gloss Dressing

Top Quartile

Touch of Scent

TPD Thinner

Tri Star L2000

Tub and Tile Caulk

Urinal Sentry Cleaner block

Vegakene

Wax remover (Armstrong - New Beginning)

WD-40 (aerosol)

WD-40 (bulk liquid)

Windex

Woodfinish (Miniwax)

HYGIENE MADE LIST

ACT Fluoride for Kids

ACT Dental Rinse

*Aqua Velva After Shave*

Aqua-fresh Toothpaste

Aramis

Attend Wipes

Avon

Double Action Deodorizer Foot Powder

Protective Lip Balm

Care Deeply Lip Balm

Skin So Soft Bath Oil

Pancy Feet Deodorizer

Provocative Cologne

Cool Confidence Roll On

Odyssey Talc

Vita Moist Cream

Baby Shampoo

Ban Roll On

Bard Moisture Barrier Ointment

Bold Hold Salon Styling Spritz

Bonne Belle Lipstick/Lip Gloss

Calgon ECF Hair and Body Shampoo

Calgon Septi-Soft Body Wash and Shampoo

Care Creme

Care Roll On

Chap Stick

Chateau Baby Oil

Children's Subble Bath

Clear Choice Mouthwash

Colgate Shave Cream

Colgate Toothpaste

Consort Aerosol Hair Spray - Extra Hold

Coppertone Sun Block

Crest-Tartar Control  
 Original Flavor  
 Fresh Mint Gel  
 Smooth Mint Gel

Crest - Regular  
 Mint  
 Cool Mint Gel  
 Icy Fresh Gel  
 Crest for Kids

Dep Spray Gel

Dep Styling Gels

Dial soap

Dove Beauty Bar

Dow Brands Hair Spray

Este Lauder Frangrances

FDS with Powder/Regular

Flex Styling Mousse

Generic Brand Nexxus Therappe Shampoo

Gentle Lotion Soap

Gentle Plus Deodorant  
 Use - hygiene

Gentle Rain Shampoo  
 Use - Hair Washing

Gillette Foamy Shave Cream

Hair Spray  
 Use - hair hold

Head & Shoulders Concentrate Shampoo

Hygenic Cleansing Towelette

Jergons Refreshing Body Shampoo

Jergons Refreshing Body Shampoo Deodorant

Ivory Soap

Lady Mitchum Deodorant

Maybelline Medium Foundation

No-Ad Sun Block

Use - sun screen

OFF! Skintastic

Old Spice After Shave

Old Spice Stick Deodorant and Shave Cream

Pert Plus

Provon Enriched Shampoo for Body and Hair

Sante Fe Cologne

*Selsun Blue Dandruff Shampoo*

Sensodyne Toothpaste

Skin Barrier Lotion

Skin Lotion

Use - Moisturize Skin

Shower to Shower Body Powder, Roll-On Antiperspirant,  
Stick Antiperspirant

*Soft Soap Lique*

Stetson Sierra

Suave Baby Shampoo

Suave Hair Spray

Suave Shampoo - Normal to Oily and Normal to Dry

Summer's Eve Cleansing Cloths

TopiCare Products (lotions and hair care)

*Teen Spirit Spray*

*Teen Spirit Shampoo*

Udder Balm

*Teen Spirit Hair Conditioners*

Vagisil Feminine Powder

White Rain Baby Shampoo

Zest

One MSDS for:

Vaseline Intensive Care

Cutex

Ponds

Q-tips

Close Up

Aqua Net

Rave

Faberge

Aim

Brut

Mentadent

Signal

05-10-1995 08:29AM FROM

TO

ANCOR P.18

FIRST AID SUPPLIES AND USE**Alcohol Prep Pads****Use - first aid****Aloe Vera Gel****Use - first aid****Cold Comfort Instant Cold Pack****Use - first aid****Lemon Glycerine Swabs****Use - first aid****Smelling Salts****Use - first aid****Surgilube****Use - first aid****Triple Antibiotic Ointment**



OFFICE MSDS LISTChemical:Equipment:

Black Toner

N/A

Black Developer

N/A

Correction Fluid

N/A

Correction Fluid Thinner

N/A

Dip It 2

N/A

Erasable Marker

N/A

Glue Stick

N/A

Marker Board Cleaner

N/A

Opti Fluid

N/A

05-16-1995 08:29AM FROM

TO

ANCOR P.28

MAINTENANCE MSDS LISTChemical:

Paint (cameo)  
Use - Wall and Trim Paint

Paint (Matchmaker)  
Use - Wall Base Paint

Silicone Sealer  
Use - on tile

STP Son of a Gun Cleaner  
One Step Tire Protectant  
Vinyl Protectant  
Car Cleaner  
Car Wash Concentrate

Windshield Washer Solvent  
Use - Care Windshield Washer

WD-40  
Use - Lubricant

Equipment:

Ventilation  
Goggles

Ventilation  
Goggles

Ventilation  
Goggles

Ventilation  
Gloves  
Goggles

Organic Vapor Mask  
Goggles

Ventilation  
Goggles

05-10-1995 08:30AM FROM

TO

ANCOR P.21

ARTS AND CRAFTS MSDS LIST

Aleene's Tacky Glue

Elmer's Glue All

Sikam's Sobo Glue

Tulip Products:

- Glitter Paint
- Polymark Iridescent
- Soft Glitter Paint
- Soft Metallic Paint

TO  
HOUSEKEEPING AIDS LIST

ANCOR P.22

CHEMICAL

ACE - Ammonia Chloramine Eliminator

Airwick Stick-Ups

Ammonia

Use - wax remover

Auto Glass Cleaner

Banish II Liquid Deodorant

*Bisell Carpet Shampoo*  
 Bleach (Comsource)

Bleach (Shopper's Value)

Bleach (liquid and dry)

Use - Laundry Sanitizer, Floor  
 Sanitizer, CPR Mask Sanitizer

Blue Concentrate

Use - All Purpose Cleaner

*Blue Magic Waterbed Conditioner*

Blue Ribbon Bleach

Bounce Fabric Softener

Brillo Lemon Soap Pads

Cascade

Use - Dishwasher

Charcoal Lighter Fluid

Use - Cooking

Clark Conquer Hospital Disinfectant

Use - to disinfect surfaces

Creme Cleanser (Sysco)

Dawn Liquid Dishwashing Detergent

Dove

Use - Dishes before dishwasher

Downy Sheets Fabric Softener

Dragon Fly & Crawling Insect Spray

Dryer Fabric Softener

Use - In Dryer

EQUIPMENT

N/A

Ventilation

Rubber gloves

Goggles

Mask (green container)

Chemical Resistant Gloves

Safety Goggles

Liquid

- Rubber gloves

- Goggles

Glasses or goggles

Mask

Rubber Gloves

Splash-proof chemical-  
 resistant goggles

N/A

N/A

Ventilation

Keep away from excessive  
 heat

Ventilation, goggles

Ventilation, goggles

Safety glasses with side  
 shields  
 Impermeable gloves

N/A

Goggles

05-10-1995 08:30AM FROM

TO

ANCDR P.23

CHEMICALEQUIPMENTFlash Dri  
Use - Dishwasher

N/A

4-in-One  
Use - Carpet Cleaner

Goggles

Glade Plug In's

Glass Mates Cleaning Wipes

Laundry Prep Plus  
Use - Prewash for LaundryGoggles  
GlovesLemon Polish  
Use - Dust Furniture

ventilation

Liquid Comet  
Use - Stain Remover

N/A

Love My Carpet  
Use - Carpet Deodorant

N/A

Love My Carpet Rug Cleaner

N/A

Lysol Disinfectant Spray  
Use - Disinfect Surfaces and Air

N/A

Lysol Foam Spray

Mikro Klein  
Use - Rinse Dishes by HandGoggles  
Gloves  
water below 120Murphy Oil Soap/Spray  
Use - On Floor, Walls, WoodNeutroder  
Use - Room Deodorizer

N/A

Nuggett Liquid Bleach

Odo-Ban Deodorizer/Disinfectant

Oven Cleaner  
Use - Clean oven interior onlyGloves  
GogglesPine 3-D  
Use - All Purpose Cleanerventilation  
Goggles  
Gloves

Purex Toss N Soft Fabric Sheets

Scotch Guard Upholstery Protector

Ventilation

Scotch Guard Fabric Protector

Scrub Free  
Use - Tubs, countertops  
spot removalVentilation  
Gloves  
Goggles

Shoppers Value Charcoal Lighter Fluid



CHEMICAL

Shout Aerosol  
 Shout Liquid  
 Shout Stick - Laundry Prespotter

Spot Bet  
 Use - Spot Clean Carpet

Spray 'N Wash Aerosol/Liquid  
 Use - Laundry Stain Remover

Steri-Fab

Tetrex  
 Use - Wash Dishes by Hand

Tide  
 Use - Laundry

Toilet Bowl Cleaner (Kola and Kling)  
 Use - Disinfect Toilet

Wax  
 Use - Wax Tile Floor

Windex  
 Use - Clean Windows

Woolite Cold Water Wash

Zud  
 Use - Rust Remover

EQUIPMENT

N/A  
 N/A  
 N/A

Ventilation  
 Gloves  
 Goggles  
 Gloves (aerosol)

Ventilation  
 Gloves  
 Goggles

Ventilation

N/A

## LISTINGS OF MATERIAL SAFETY DATA SHEETS (MSDS's)

UPDATED: April 12, 1995

The following is a list of Material Safety Data Sheets, (MSDS's) currently on file at Central Office:

<u>MSDS #</u>	<u>PRODUCT</u>	<u>COMPANY</u>
<u>BLEACHES</u>		
✓BL-01	Shop & Save Bleach	Laundry Aids, Inc.
✓BL-02	Shop & Save Lemon Fragrance Bleach	Elite Chemicals
✓BL-03	Clorox Bleach	Wonder Chemical Corp.
✓BL-04	Elite Bleach	Elite Chemicals
✓BL-05	Purex Liquid Bleach	The Dial Corporation
<u>OVEN CLEANERS</u>		
✓OC-01	Mr. Muscle Oven Cleaner	The Drackett Products Co.
✓OC-02	K-Mart Our Best Oven Cleaner	Chemisico
✓OC-03	Dow Oven Cleaner	DowBrands
✓OC-04	Easy-Off Non-Caustic Oven Cleaner - Lemon	Boyle-Midway Division of American Home Products Corp.
✓OC-05	Easy-Off Oven Cleaner Original, Heavy Duty	Reckitt & Coleman, Inc.
✓OC-06	Easy-Off Fume Free Max Oven Cleaner	Reckitt & Coleman, Inc.
<u>GLASS/WINDOW CLEANERS</u>		
✓GW-01	Shop & Save Glass Cleaner	Kleen Brite Laboratories, Inc.
✓GW-02	CINCH Glass & Multi-Surface Cleaner	Procter & Gamble
✓GW-03	Spartan Glass Cleaner (New & improved)	Spartan Chemical Co., Inc
✓GW-04	Spartan Glass Cleaner	Spartan Chemical Co., Inc

<u>MSDS #</u>	<u>PRODUCT</u>	<u>COMPANY</u>
---------------	----------------	----------------

<u>GLASS/WINDOW CLEANERS (continued)</u>		
--	--	--

✓GW-05	Clear-Vue Glass Cleaner	Clear-Vue Products, Inc.
✓GW-06	Windex Glass Cleaner with Amonia	S.C. Johnson Wax
✓GW-07	K-Mart Window Cleaner	Barcolene Co.
✓GW-08	Bon-Ami Glass Cleaner	Bon-Ami Co.
✓GW-09	Glass Plus	Dow Brands
✓GW-10	409 Glass & Surface Cleaner	Clorox, Inc.
✓GW-11	Windex Glass Cleaner (Blue)	S.C. Johnson Wax
✓GW-12	Spring Fresh Glass Cleaner	Sunshine Quality Products

<u>BATHROOM CLEANERS</u>		
--------------------------	--	--

BC-01	Soft Scrub with Bleach	The Clorox Company
✓BC-02	Scrub Free Bathroom Cleaner	Benckiser Consumer Products, Inc.
✓BC-03	Comet Bathroom Cleanser	Proctor & Gamble
✓BC-04	Shop & Save No-Scrub Bathroom Cleaner	The Stanson Corporation
✓BC-05	Dow Disinfectant Bathroom Cleaner II with Scrubbing Bubbles	Dow Brands
✓BC-06	Vanish Mildew Plus Stain Remover	Drackett Products Co.
✓BC-07	Bathroom Duck	S.C. Johnson & Son, Inc.
✓BC-08	Lysol Brand Disinfectant Basin, Tub & Tile Cleaner (Trigger)	L & F Products
✓BC-09	Lysol (R) Brand Disinfectant Liquid Toilet Bowl Cleaner (All Scents)	L & F Products
✓BC-10	Scrub Free One Bathroom Cleaners	Benckiser Consumer Products, Inc.

MSDS #PRODUCTCOMPANYGENERAL HOUSEHOLD CLEANERS

✓GC-01	Comet Cleanser (Regular & Lemon Fresh Fragrances)	Proctor & Gamble
✓GC-02	Ajax Cleanser	Colgate-Palmolive Co.
✓GC-03	Spic & Span Liquid Non-Phosphate	Proctor & Gamble
✓GC-04	BON AM Kitchen & Bath Cleaner	Faultless Starch/Bon Ami Company
✓GC-05	Xtra Pine Cleaner	White Cap, Inc.
✓GC-06	Spartan Sterigent Cleaner	Spartan Chemical Co., Inc
✓GC-07	Steriphene II Brand Disinfectant Deodorant	Spartan Chemical Co., Inc
✓GC-08	CDC-10	Spartan Chemical Co., Inc
✓GC-09	Barcolene with Amonia	The Barcolene Company
✓GC-10	Shop & Save Brand Household Amonia	Laundry Aids, Inc.
✓GC-11	Simple Green Industrial Cleaner & Degreaser	Sunshine Makers, Inc.
✓GC-12	Fine-Sol Cleaner	Clorox Co.
✓GC-13	Comet Liquid Chlorinated Cleanser	Proctor & Gamble
✓GC-14	Fantastik All Purpose Cleaner	Dow Brands
✓GC-15	Swiss Pine	USA Detergents, Inc.
✓GC-15	Household Ammonia (Clear, Clear Blue, Lemon, Sudsy)	Dial Corp.
✓GC-16	Murphy Oil Soap, Liquid	Colgate-Palmolive Co.
GC-17	Sun Magic All Purpose Cleaner	Gemstone Enterprises, Inc
✓GC-18	Shop & Save Heavy Duty All Purpose Cleaner	Grow Consumer Products
✓GC-19	Parsons Amonia	The Dial Corp.

<u>MSDS #</u>	<u>PRODUCT</u>	<u>COMPANY</u>
---------------	----------------	----------------

GENERAL HOUSEHOLD CLEANERS (continued)

✓GC-20	Kleen Guard Furniture Polish	Alberto-Culver Co.
✓GC-21	Scotch Pine All Purpose Cleaner	Canton Industries, Inc.
✓GC-22	Formula 409 All Purpose Cleaner	The Clorox Company
✓GC-23	NOW All Purpose Cleaner/Degreaser	Mirachem Corporation
✓GC-24	Tackle Cleaner Disinfectant	Clorox Co.
✓GC-25	Shaw's Amonia	Shaw's, Inc.
✓GC-26	Sea Mist Amonia	Laundry Aids, Inc.
✓GC-27	Ultra Mr. Clean with Bleach	Proctor & Gamble
✓GC-28	Shop & Save Heavy Duty Cleaner with Amonia	Grow Consumer Products

SPRAY DISINFECTANTS/AIR FRESHENERS

✓SD-01	Shop & Save Spray Disinfectants	Grow Consumer Products
✓SD-02	Arm & Hammer Deodorizing Air Freshener (All Scents)	Church & Dwight, Co., Inc.
✓SD-03	Lysol Brand Disinfectant Spray Original, Fresh, Light, Country Scents	L & F Products

DRAIN CLEANERS

✓DC-01	Liquid Drano Drain Opener	The Drackett Products, Co
✓DC-02	Liquid Plumber	Clorox Co.
✓DC-03	Lewis Red Devil Lye Drain Opener	Reckitt & Coleman, Inc.



## MSDS MASTER LISTING

April 12, 1995

PAGE 5

MSDS #PRODUCTCOMPANYGASOLINE/ANTIFREEZE

- |        |   |                          |
|--------|---|--------------------------|
| ✓GA-01 | Irving Gasoline, (Regular, Unleaded, Plus Unleaded, Supreme Unleaded) | Irving Oil Corporation   |
| ✓GA-02 | Irving Everflow   | Irving Oil Corporation   |
| ✓GA-03 | Heat Gasline Antifreeze   | DeMart & Dougherty, Inc. |

CARPET CLEANERS

- |        |   |   |
|--------|---|---|
| ✓CC-01 | Resolve (TM) Carpet Cleaner with Teflon       | L & F Products                                  |
| ✓CC-02 | Rug Doctor Steam Detergent                    | Rug Doctor, Inc.                                |
| ✓CC-03 | Rug Doctor/Vibra Vac Spot Remover/Spot & Blot | Rug Doctor, Inc.                                |
| ✓CC-04 | Rug Doctor/Vibra Vac/Acs Anti-Foam            | Rug Doctor, Inc.                                |
| ✓CC-05 | Rug Doctor Flea Killer                        | Rug Doctor, Inc.                                |
| ✓CC-06 | Rug Doctor Original Steam Carpet Cleaner      | Rug Doctor, Inc.                                |
| ✓CC-07 | Woolite Deep Cleaning Rug Cleaner             | Reckitt & Coleman, Inc.                         |
| ✓CC-08 | Tru-Test Concentrated Rug Shampoo RS-18       | Tru-Test Manufacturing Division of Cotter & Co. |
| ✓CC-09 | RinseVac Prespotter                           | Blue Luster Home Care Products, Inc.            |

PAINT/VARNISH REMOVERS

- |        |                             |                             |
|--------|-----------------------------|-----------------------------|
| ✓PR-01 | 5F5 Paint & Varnish Remover | Sterling-Clark-Lurton Corp. |
| ✓PR-02 | Coops Latex Paint Remover   | DIY Products                |

PAINT THINNERS

- |        |                              |                             |
|--------|------------------------------|-----------------------------|
| ✓PT-01 | THIN-X                       | Sterling-Clark-Lurton Corp. |
| ✓PT-02 | DAP Weldwood Cleaner/Thinner | DAP, Inc.                   |

MSDS #      PRODUCTCOMPANYPAINTS/VARNISHES/COATINGS

✓PV-01	Rust-Oleum Wood Saver Topcoats (Aerosol)	Rust-Oleum Corporation
✓PV-02	Tru-Test Supreme EX-Kare Flat Enamel	General Paint & Chemical Co.
✓PV-03	Tru-Test Supreme Latex Enamel Undercoat	General Paint & Chemical Co.
✓PV-04	Bin Primer/Sealer	William Zinsser & Co. Inc

INSECT KILLERS/REPELLENTS

✓IK-01	Green Thumb Roach, Ant & Spider Killer	Wilbur-Ellis Company
✓IK-02	Cutter Unscented Insect Repellent Spray	Miles, Inc.
✓IK-03	RAID Flying Insect Killer Formula 12	S.C. Johnson Wax
✓IK-04	DEEP Woods Off, Insect Repellent II	S.C. Johnson Wax
✓IK-05	OFF Insect Repellent	S.C. Johnson Wax
✓IK-06	Repel Insect Repellent Scented Family Formula 27	Wisconsin Pharmacal Co.
✓IK-07	Repel Insect Repellent Sportsmen Formula 29	Wisconsin Pharmacal Co.
✓IK-08	RAID House & Garden Bug Killer	S.C. Johnson Wax
✓IK-09	RAID Flying Insect Killer Formula 5	S.C. Johnson Wax

PLANT/GARDEN CHEMICALS

✓PG-01	Ortho Leaf Polish (Pump Spray)	Chevron
✓PG-02	Ortho Leaf Polish (Aerosol)	Chevron

MSDS MASTER LISTING

APRIL 12, 1995

PAGE 7

MSDS #PRODUCTCOMPANYCHARCOAL LIGHTER STARTERS

✓CS-01	Royal Oak Lighter Fluid/ Charcoal Starter	Royal Oak Enterprises, Inc.
✓CS-02	Shop & Save Charcoal Lighter Fluid	Linwood Industries Limite
✓CS-03	Kingsford Odorless Charcoal Lighter	The Clorox Co.
✓CS-04	Amberglo Charcoal Lighter	Sebring Forest Industries
✓CS-05	BI-RITE Charcoal Starter	Glendale Foods, Inc.

FLOOR WAXES/REMOVERS

✓FW-01	Bacon Self Polishing Floor Wax	Lehn & Fink Products Co.
✓FW-02	Parson's Wax & Acrylic Remover	The Dial Corp.
✓FW-03	Brite Floor Wax	S.C. Johnson Wax
✓FW-04	Electrodux Wood Floor Wax	Electrodux

UPHOLSTERY CLEANERS

✓UC-01	TLC Vinyl Claener	Great Lakes Biochemical Co., Inc.
✓UC-02	Aerosol Upholstery Shampoo	Bissell, Inc.
✓UC-03	Resolve (TM) Fabric & Upholstrey Cleaner	L & F Products

MEDICAL/FIRST AID

✓MD-01	Shop & Save/Welby Hydrogen Peroxide	Hamond Drug, Inc.
✓MD-02	Shop & Save/Welby 70% Isopropyl Alcohol in Water	Divina/Diamond Drug

MSDS MASTER LISTING

April 12, 1995

PAGE 8

MSDS #PRODUCTCOMPANYPOOL CHEMICALS

✓PL-01	Tarry 3" Chlorine Tablets	Qualco, Inc.
✓PL-02	Chlorine Stabilizer	Coastal Industries
✓PL-03	Whale Brand Ph Plus	DLM Laboratories, Inc.
✓PL-04	Whale Brand Shock It Chlorine	DLM Laboratories, Inc.
✓PL-05	Whale Brand Algae Prevent 40	DLM Laboratories, Inc.

DISHWASHING DETERGENTS

✓DD-01	Sunlight Light Duty Liquid Dishwashing Detergent	Lever Brothers, Co.
✓DD-02	Octagon/Crystal White Dishwashing Liquid	Colgate-Palmolive Co.
✓DD-03	Dawn Liquid Dishwashing Liquid	Proctor & Gamble
✓DD-04	Lemon Cascade Liquigel Dishwashing Detergent	Proctor & Gamble

HAND SOAPS/CLEANERS

✓HS-01	Clean & Smooth Liquid Lotion Hand Cleaner	Benckiser Consumer Products, Inc.
✓HS-02	Liquid Antimicrobial Soap	The Dial Corporation

LAUNDRY CLEANERS

✓LC-01	SHOUT Aerosol	S.C. Johnson Wax
✓LC-02	SHOUT Liquid	S.C. Johnson Wax
✓LC-03	SHOUT Stick Laundry Presotter	S.C. Johnson Wax
✓LC-04	SHOUT Gel Laundry Prespotter	S.C. Johnson Wax
✓LC-05	X-TRA Liquid Laundry Detergent	U.S.A. Detergents, Inc.

MSDS MASTER LISTING

April 12, 1995

PAGE 9

MSDS #PRODUCTCOMPANYMISCELLANEOUS

✓MS-01	Eaton's Stick-Em Glue Traps	J.T. Eaton & Company, Inc
✓MS-02	WD-40 Aerosol	WD-40 Co.
✓MS-03	SOS Steel Wool Pads	Miles, Inc.
✓MS-04	Liquid Paper Correction Fluid	Gillette Company
✓MS-05	Cameo Aluminum & Stainless Steel Cleanser	The Dial Corp.
✓MS-06	Niagara Professional Finish Original Spray Starch	Best Foods, CPC International, Inc.
✓MS-07	Old English Scratch Cover for Dark Wood	Reckitt & Coleman, Inc.
✓MS-08	Sure Melt (rock Salt)	WH Shurtleff Company
✓MS-09	Liquid Nails Contact Cement (Latest Contact Adhesive)	M-A-C-C Adhesives



VILLAGE  
Master Chemical List  
Revised 1/94

No.	Product Name
001	Diversey Zerospot Dishwasher Rinsing Agent
002	Elite II Dishwasher Detergent
003	SpectraCare Microbial Hand Soap
004	Sani-Fresh Body Shampoo
005	Command Center LOOK Glass Cleaner #2
006	Command Center General Purpose Cleaner #3
007	Command Center Blue Skies II Disinfectant #8
008	Fountainhead Carpet Extraction Cleaner
009	High Noon Floor Finish
010	Purity ENBAC AP Enzyme Cleaner
011	Purity Krene Kleen Abrasive Cleaner
012	Purity D200 Disinfectant Aerosol
013	Purity 4-Way Toilet Bowl Cleaner
014	Purity Rinse Free Stripper
015	MAD Mild Acid Detergent
016	RA-25 Insect Spray, Aerosol
017	Purity One Step Detergent
018	Salute Dishwasher Detergent
019	Benchmark Floor Finish
020	Ironstone Acrylic Floor Sealer
021	Over Drive Spray Buff Floor Finish
022	Bare Knuckles Floor Stripper
023	Jackhammer Baseboard Stripper
024	Acetone
025	Lubecon Series I Lubricant
026	Purity AFBC Bathroom Cleaner
027	Spot Bet/Spot Relief Spot Remover
028	Oven & Grill Cleaner
029	Purity Pot & Pan Hand Dishwashing Detergent
030	Spinout Spin Bonnet Cleaner
031	Sundance Q Disinfectant
032	Look Glass Cleaner, Ready To Use
033	First Defense Soil Retardant
034	Phenex 256 Phenolic Disinfectant
035	Vertex Bleach
036	#F120 Indoor/Outdoor Insecticide
037	Low Energy Drying Agent - Rinse Additive
038	RAID MAX Roach & Ant Killer
039	ABC Dry Chemical Fire Extinguisher
040	Regular Dry Chemical Fire Extinguisher
041	Command Center Hot Springs General Purpose Cleaner Concentrate 20
042	Command Center Triple Team Citric Washroom Cleaner
043	Novaweld P
044	Purity Pine Forest 5 Disinfectant Cleaner
045	CFR Defoam
046	BARE KNUCKLES
047	CLOCKWORK
048	SPECTRUM
049	
050	
051	
052	
053	
054	
055	

Maintenance Chemicals Continued

No.	Product Name
110	Clean-R-Carb
111	Engine Degreaser
112	Battery Cleaner
113	Permatex Hi Temp RTV Silicon
114	Acetylene
115	All Climate Motor Oil 10w-40
116	All Climate Motor Oil 10w-30
117	Motor Oil SAE 40w, non-det
118	Motor Oil SAE 30w, non-det
119	Auto-Trans Fluid, Type FA
120	Auto-Trans Fluid, Dextron II
121	Valvoline Wheel Bearing Grease
122	Marvel Auto Trans Sealer & Con.
123	Devcon Sunroof & W'shield seal
124	Mobil Diesel Fuel
125	Rustoleum Paint Thinner
126	PVC Cement-Clear
127	Delstar Acrylic Enamel DAR-8000
128	" " " DAR-9000
129	" " " DAR-71654
130	" " " DAR-80046
131	" " " DAR-2058
132	Oxygen (O2)
133	Grinding Wheels
134	Coolant/Anti-Freeze
135	#1 Diesel - Mobil
136	Gasoline -Aviation
137	
138	Airco Easy Arc 7018AC Weld Rod
139	NAPA Silicone Brake Fluid
140	duPont Lacquer Thinner
141	Loctite Radiator Repair
142	Permatex Gasket Remover
143	Duro Contact Cement
144	Loctite 271 Threadlocker
145	Silicone
146	White Grease
147	Carb & Choke Cleaner
148	Brake Cleaner

SWIMMING POOL CHEMICALS - MSDS are kept in pool office

No.	Product Name
149	Spa-Brom & Related Chems.
150	HCL Solution
151	Sodium Hypochlorite
152	Calcium Hypochlorite
153	Oxysheen
154	Sodium Bicarbonate
155	Sodium Thiosulphate Crystals
156	DPD Powder
157	FAS DPD Titrating Reagent
158	Potassium Iodide Crystals
159	DPD #3 Tablets-Total Chlorine
160	Multitest Reagent #2 Phenol Red
161	Guardex Reagent #4

Pool Chemicals Continued

No.	Product Name
162	Multitest 1200 Reagent #4
163	Tile & Vinyl Cleaner
164	Filter Cleaner
165	Stain/Scale Control
166	Dexnapro Spa Bath
167	Multitest 1200 Reagent #3
168	Alkaline Demand Reagent
169	Multitest Reagent #5
170	DPD #1 Tablets
171	Algae Killer
172	Alkalinity Control
173	Guardex Solution #1
174	Guardex Solution #6
175	Guardex Solution #7
176	Guardex Solution #8
177	Guardex Solution #10
178	Reagent #2 Bromine Titrant
179	Guardex Solution #9
180	#7 Alkalinity Indicator
181	#9 Calcium Buffer Reagent
182	#10 Calcium Indicator
183	Guardex Algaecide 60
184	Guardex Algae Control Concent.
185	Aquatech Aquacide
186	Guardex Conditioner
187	Guardex Pool Water Clarifier
188	Guardex pH Stabilizer
189	Guardex Hardness Increaser
190	Guardex Chlorinating Concent.
191	Alkaline Surface Cleaner
192	Alkaline Demand Reagent 3/B
193	Strip Kwik Filter Cleaner
194	DPD #4 Tablets
195	Holister Deodorizer/Germicide
196	Pool Magnet/Metal Inhibitor

SWIMMING POOL CHEMICALS - MSDS are kept in pool office

No.	Product Name
149	Spa-Brom & Related Chems.
150	Muriatic Acid
151	Sodium Hypochlorite
152	Burn Out/Break Out/Pro Shock/Break Point/CIC
153	Oxysheen
154	Sodium Bicarbonate
155	Sodium Thiosulphate Crystals
156	DPD Powder
157	FAS DPD Titrating Reagent
158	Potassium Iodide Crystals
159	DPD #3 Tablets-Total Chlorine
160	Multitest Reagent #2 Phenol Red
161	Guardex Reagent #4
162	Multitest 1200 Reagent #4
163	Guardex Super Chlorinator 35 & other trade names
164	Aquabrome Tablets/Guardex Brominating Tablets
165	pHd, Guardex Dry Acid, Aquatech pH Minus Control IV
166	OPEN FOR FUTURE USE
167	Multitest 1200 Reagent #3
168	Alkaline Demand Reagent
169	Multitest Reagent #5
170	DPD #1 Tablets
171	Guardex Reagent #3 - Acid Demand
172	Hydrotech Reagent #3 - Stabilized pH Indicator
173	Reagent #1-Bromine Indicator Powder, DPD #1 Tablets, Hydrotech Accutest DPD #4
174	DPD #3 Tablets/Hydrotech Accutest DPD #3
175	Guardex Solution #5/Hydrotech Accutest Reagent #6
176	Guardex Solution #2 - Phenol Red
177	Foam Away/AquaTech Defoamer
178	Guardex Tile & Vinyl Cleaner
179	Spa-Guard Brominating Pool Tablets
180	#7 Alkalinity Indicator
181	Mercury Thermometer
182	Muriatic Acid 20 Deg.
183	Vertex CSS-12
184	Alkaline Surface Cleaner
185	Alkaline Demand Reagent 3/B
186	Strip Kwik Filter Cleaner
187	DPD #4 Tablets
188	Holister Deodorizer/Germicide
189	Pool Magnet/Metal Inhibitor

HANDICAP VILLAGE  
Chemical List  
Revised 6/92 -

V#	Trade Name	Mfg code
001	Vani-Sol	2
002	Vesta-Syde	4
003	Umbrella Floor Sealer	2
004	Umbrella Syntha Seal	2
005	Umbrella Wax/Polish Stripper	2
006	Improved Truc Blue	1
007	Scene Glass/Multi Cleaner	5
008	Sanasorb	2
009	SC-200	6
010	Outright	1
011	Mr Pip Solvent	7
012	Phosphoric Bowl Cleaner	8
013	Easycare Lemon Polish	5
014	Mist 'n Clean	9
015	1st Degree Degreaser	1
016	Lemon Oil Polish	10
017	Galley Oven Cleaner	5
018	Furniture Cream	8
019	d-Con Mist Insecticide	5
020	d-Con Ant & Roach Liquid	5
021	Professional Scene II	5
022	Roccal II Disinfectant	5
023	d-Con Flying Insect Killer	5
024	Ajax Cleaner	11
025	N.L Creme Cleanser	5
026	Neutrodor Lemon Deodorizer	5
027	Metalist SBR-2000	5
028	Pure and Soft Fabric Softener	12
029	Liquid Paper Correction Fluid	13
030	Wizard Charcoal Lighter	14
031	Fresh Start Laundry Deterg.	11
032	Humidifier Helper	15
033	Whink Humidifier Helper	15
034	Humidifier Descaler	15
035	Humidifier H2O Treatment	16
036	Terro Ant Killer	17
037	Antrol Ant Traps	14
038	N L High Foam Cleaner	5
039	3M Carpet Spray Cleaner	18
040	Masterpiece Floor Finish	5
041	Pro. "Love My Carpet"	5
042	NL All Purpose Cleaner	3
043	Plumbers Friend Drain Cleaner	19
044	Vanisol Disinfectant	5
045	Z-56 Ultra-fast Stripper	5
046	Metalist Floor Finish	5
047	Institutional Lysol Cleanser	5
048	Duration Floor Sealer	5
049	Time-Shine Acid Deterg.	5
050	SCP HD Bowl Cleaner	19
051	Time Away	20
052	Super Trump - Dishwasher Det.	20
053	Clorox - Reg. Bleach	21
054	Soft Scrub	21
055	Mr. Muscle Oven Cleaner	22



- indicates sheets  
in this book



056	TLC Pool and Tile Cleaner	23
057	Hil-Tex II - Floor Sealer	24
058	Expediter Floor Finish	24
059	Hil-Tex Floor Finish	24
060	Easy Glow DFM	2
061	Easy Touch Restorer	2
062	Easy 20 Floor Polish	2
063	Medi-Scrub	2
064	Glass Cleaner Concent. VPT	8
065	Nyco Concent. Calci-Solv	25
066	Oatey Reg Clear PVC Solv/Cement	26
067	Oatey Clear Primer	26
068	Oatey #5 Soldering Paste	27
069	Krylon Crystal Clear Spray Coat	28
070	Round-Up Herbicide	29
071	Pro-Turf Trimec Broadleaf 881	30
072	Unleaded Gasoline	31
073	HEET Gasline Antifreeze	32
074	NAPA Silicone Brake Fluid	33
075	Carb & Choke Cleaner	34
076	Brake Cleaner	35
077	Sulphuric Acid Drain Opener	10
078	Dust Mop Treatment	10
079	Reducer	36
080	Acrylic Enamel Reducer	36
081	Acrylic Enamel Retarder	36
082	All Purpose Thinner	36
083	Fish Eye Preventer	36
084	Flatting Paste	36
085	Wax & Grease Remover	36
086	Flexative	36
087	Hardener	36
088	Wash Primer	36
089	Wash Primer Catalyst	36
090	Accelerator Additive	36
091	Kondar Primer Surfacer	36
092	Nitrocellulose	36
093	Zinc Chromate Primer	36
094	Grey Flash Primer	36
095	Clear Sealer	36
096	Red Cap Spot Putty	36
097	Acrylic Urethane Clear	36
098	Deltron Catalyst	36
099	Del-Seal	36
100	Paint Remover	36
101	All Purpose Lacquer Thinner	36
102	Kleen-Up Solvent	24
103	Power Steering Fluid 611.B	37
104	White Lube	37
105	NAPA Windshield Washer Solvent	38
106	Cemented Carbide Products	39
107	Brazing Flux #1 Silver Solder	40
108	Acid Flux Cored Solder	41
109	SP-30 Soldering Paste Flux	41
110	Clean-R-Carb	42
111	Engine Logreuser	42
112	Battery Cleaner	42
113	Permatex Hi Temp RTV Silicone	43
114	Acetylene	3
115	All Climate Motor Oil 10W-60	44
116	All Climate Motor Oil 15W-50	44

117	Motor Oil SAE 40w, non-det	44
118	Motor Oil SAE 30w, non-det.	44
119	Auto-Trans Fluid, Type FA	44
120	Auto-Trans Fluid, Dextron II	44
121	Valvoline Wheel Bearing Grease	44
122	Marvel Auto Trans Sealer & Con.	45
123	Devcon Sunroof & W'shield seal	46
124	Mobil Diesel Fuel	47
125	Rustoleum Paint Thinner	48
126	PVC Cement-Clear	49
127	Delstar Acrylic Enamel DAR-8000	36
128	" " " DAR-9000	36
129	" " " DAR-71654	36
130	" " " DAR-80046	36
131	" " " DAR-2058	36
132	Oxygen (O2)	50
133	Grinding Wheels	51
134	Coolant/Anti-Freeze	52
135	#1 Diesel - Mobil	47
136	Gasoline -Aviation	53
137	Open	00
138	Airco Easy Arc 7018AC Weld Rod	54
139	NAPA Silicone Brake Fluid	33
140	duPont Lacquer Thinner	55
141	Loctite Radiator Repair	43
142	Permatex Gasket Remover	43
143	Duro Contact Cement	43
144	Loctite 271 Threadlocker	43
145	Silicone	35
146	White Grease	35
147	Carb & Choke Cleaner	34
148	Brake Cleaner	35
149	Spa-Brom & Related Chems.	56
150	HCL Solution	57
151	Sodium Hypochlorite	58
152	Calcium Hypochlorite	59
153	Oxysheen	59
154	Sodium Bicarbonate	60
155	Sodium Thiosulphate Crystals	61
156	DPD Powder	62
157	FAS DPD Titrating Reagent	62
158	Potassium Iodide Crystals	62
159	DPD #3 Tablets-Total Chlorine	59
160	Multitest Reagent #2 Phenol Red	59
161	Guardex Reagent #4	56
162	Multitest 1200 Reagent #4	59
163	Tile & Vinyl Cleaner	56
164	Filter Cleaner	56
165	Stain/Scale Control	56
166	Dermapro Spa Bath	63
167	Multitest 1200 Reagent #3	59
168	Alkaline Demand Reagent	59
169	Multitest Reagent #5	59
170	DPD #1 Tablets	59
171	Algae Killer	56
172	Alkalinity Control	56
173	Guardex Solution #1	56
174	Guardex Solution #6	56
175	Guardex Solution #7	56
176	Guardex Solution #9	56
177	Guardex Solution #10	56

178	Reagent #2 Bromine Titrant	56
179	Guardex Solution #9	56
180	#7 Alkalinity Indicator	56
181	#9 Calcium Buffer Reagent	56
182	#10 Calcium Indicator	56
183	Guardex Algaecide 60	56
184	Guardex Algae Control Concent.	56
185	Aquarech Aquacide	56
186	Guardex Conditioner	56
187	Guardex Pool Water Clarifier	56
188	Guardex pH Stabilizer	56
189	Guardex Hardness Increaser	56
190	Guardex Chlorinating Concent.	56
191	Alkaline Surface Cleaner	59
192	Alkaline Demand Reagent 3/8	59
193	Strip Kwik Filter Cleaner	59
194	UPD #4 Tablets	59
195	Holister Deodorizer/Germicide	64
196	Pool Magnet/Metal Inhibitor	59
197	Parsons' Sudsy Ammonia	
198	SPC Enzyme Eliminator	
199	Dermapro Spa Bath	
200	Pro Love My Carpet Powder	
201	Masterpiece Stripper	
202	Sprayway Tru-Nox	
203	Sure-Trac Quarry Tile Cleaner	
204	Diversey Zerospot	
205	Elite II - dishwasher detergent	
206	SpectraCare Handwash Microbial	
207	Sani-Fresh Body Shampoo	
208	Command Center GLASS CLEANER Concentrate 2	
209	Command Center GENERAL PURPOSE CLEANER Concentrate 3	
210	BLUE SKIES Disinfectant Cleaner	
211	FOUNTAINHEAD Extraction Cleaner	
212	HIGH NOON Urethane Floor Finish	
213	Purity ENBAC AP	
214	Purity Krewe Kleen	
215	Purity D200	
216	Purity 4-Way Bowl Cleaner	
217	Purity Rinse Free Stripper	
218	MAD Mile Acid Detergent	
219	#RA25 Residual Insecticide Spray	
220	Purity One Step	



## Brushing up

Bill Atwood

Lisa Cornwell, an apartment coordinator at the Harry Meyerling Center, displays the equipment staff members now have to wear while helping mentally retarded residents with their daily needs.

# Astronaut care?

## Director: New rules put dents in dignity

By JOE TOUGAS  
Free Press Staff Writer

**MANKATO** — How would you feel if the person helping you take care of yourself at home one day showed up wearing a plastic mask, rubber gloves and an apron?

"That I'm less than whole, that I'm not a healthy person," figures Carol Lee, director of the Harry Meyerling Center (HMC).

As a supervised home for the mentally retarded, HMC and other similar facilities this week began following new federal regulations that require treating all residents as if they

were carrying blood disease.

And in homes such as HMC, where the staff philosophy is to foster an atmosphere of normalcy, the new measures amount to needless overkill, Lee said. And, she continued, part of the cost of following the new standard is residents' dignity.

The new standards, established by the Occupational Safety and Health Administration (OSHA), require protective equipment on all employees who can "reasonably anticipate" coming into contact with

See CARE  
(Please turn to page 10)

# CARE: A good law that goes way too far

(Continued from page 1)

blood on the job. The measure is designed to limit exposure to blood diseases such as hepatitis B or the HIV virus.

Daryl Anderson, chief of the Minnesota Department of Health's Occupational Division, said that although the new standard is focused upon the medical profession, it's still a blanket requirement for all facilities where exposure to blood can be expected.

At homes such as HMC, which houses 44 residents, routine staff duties such as helping residents eat, brush teeth, change clothes, change laundry and take medication now have to be done with protective clothing — varying degrees of masks, gloves and aprons.

Lee said that while some residents take the new measures in stride, others who have an acute fear of medical personnel and equipment are further traumatized by the medical garb, "which looks as though you just came from Mars."

Judy Dunlop, nursing supervisor at IIMC, says group homes offer different circumstances from a hospital or health care center.

"This is where they live, this is

their home. We're to approach them in a way a friend might approach you."

Beyond the potential cost to residents' comfort, the new regulations also are expensive. The new equipment, plus an already rescinded provision that hepatitis vaccinations be made available for any staff members desiring them, has cost IIMC more than \$6,000, Lee said.

In addition, an example that staff members try to set for clients to recycle and avoid use of plastic products doesn't jibe with the amount of disposable protective gear required by OSHA's standard.

Dunlop said the standard is a reaction to the AIDS epidemic, and the result is that facilities such as IIMC are implementing AIDS-prevention standards that simply aren't appropriate to the facility. The odds are minimal — if existent at all — of IIMC clients contracting HIV, she said.

"The majority of our population is severely and profoundly mentally retarded, so they have to be supervised all the time. They're certainly not sexually active with people outside the facility."

Hepatitis B has been around much longer than HIV, Dunlop noted, yet never before have such

widespread precautions been activated in the name of hepatitis. "It's all changed because of HIV, not hepatitis B."

And protective measures have always been taken with those clients diagnosed with blood diseases. In her 17 years at IIMC, she has never caught anything from a client, including those who had hepatitis B.

"And now they're saying we have to treat everyone as though they're a carrier. I think it's overkill, to say the least."

From the health department's point of view, the standard is a blanket approach to safety.

"I know that's somewhat confusing because the hepatitis B rate is relatively low, especially in greater Minnesota," Anderson said. "But the federal folks have decided that all people have to be treated as though they're HIV-positive or hepatitis B positive, because you just don't know."

The rule says it's up to all workplaces to determine whether there's reasonable likelihood staff members will come into contact with blood. Once that determination is made and reported to the state, the standards kick in.

Linda Kilvington, director of Christian Concern (CCC), which like IIMC operates both group

homes and supervised independent homes for the physically and mentally retarded in Mankato, said CC staffers use the protective equipment in incidents where there's an identifiable risk, such as the presence of blood, semen or saliva tinted with blood. They know which clients will tend to bleed when helped, for instance, with tooth-brushing, and staff members equip themselves accordingly.

"It's discretionary as to who would need that," she said.

Lee said she's uncomfortable going along on a discretionary basis. Although she disagrees with the scope of the standard, she said she's obliged to follow the mandate until it's revised. Efforts are under way at the state and federal levels to get IIMC-type facilities out from under the mandate.

"I want to see something in writing that says to me you have the freedom to use your discretion."

But no such leeway is given in the standard, she said.

When the new regulations were unveiled in December, Gerard F. Scannell, assistant secretary of Labor, said: "Employees must treat blood and certain body fluids as if infectious. Meeting these requirements is not optional. It's

essential to prevent illness, chronic infection and even death."

"I definitely think it's overreaching," Dunlop said, "that they're asking you to treat everyone as though they're infected. It's impractical, it's costly, it's not good for the environment, and it's not a well-thought-out standard."



## AMERICAN NETWORK OF COMMUNITY OPTIONS AND RESOURCES

## REGULATORY RECOMMENDATIONS

## Housing and Urban Development

**24 CFR Part 890****Section 811 Supportive Housing for People with Disabilities**

There are several HUD programs that provide assistance to people with disabilities. HUD's *Section 811 Supportive Housing for Persons with Disabilities Program* provides financing (in the form of capital advances and project-based assistance) to non-profit sponsors for approximately 2,500 units annually to acquire, rehabilitate or develop affordable housing for people with disabilities (group homes, independent living facilities, and units in multifamily, condominium, and cooperative developments).

Section 811—formerly part of the Section 202 Elderly and Handicapped Housing Program—is one of HUD's most successful programs, scandal-free, and with a history of good management. However, some of HUD's regulations and interpretative guidance relative to Section 811 program are unnecessarily burdensome and restrictive. To its credit, HUD has made some measurable progress in efforts to "streamline" the program in the past few years. However, the program is no longer a loan program but a grant award and HUD has as yet to make the necessary changes. The Section 811 regulations still add to time delays in developing critically needed housing and add unnecessarily to the cost of units.

Since the Administration has proposed consolidating the Section 811 program into a single "performance-based" affordable housing fund, transferring the fund to state and local governments to continue this housing as an eligible activity, ANCOR will reserve making many specific recommendations for the program at this time. Instead, ANCOR will continue to work directly with HUD and with the Congress on the future of this program and other HUD assistance for people with disabilities to meet the critical need for affordable and accessible housing.

However, ANCOR does have the following specific regulatory concern relative to HUD and OMB Circular A-133.

**24 CFR Part 45****And HUD Prohibition Against Use of Single Audit**

OMB Circular A-133 "Audits of Institutions of Higher Education and Other Nonprofit Institutions," provides policy guidance to Federal agencies for establishing uniform requirements for audits of awards provided to institutions of higher education and other nonprofit organizations. The provisions of Circular A-133 apply to:

a. Federal departments and agencies responsible for administering programs that involve grants, cost-type contracts and other agreements with institutions of higher education and other nonprofit recipients.

b. Institutions of higher education and other nonprofit institutions whether they are recipients receiving awards directly from Federal agencies or are subrecipients receiving awards indirectly through other recipients.

ANCOR member provider agencies are sponsors under Section 811 housing program and its predecessor Section 202 housing program. Nonprofit organizations are the only eligible applicants under this program. However, for HUD programs whose regulations are set forth in 24 CFR parts 200 series and 800 series, a nonprofit institution is the nonprofit corporation which owns the individual property receiving the HUD assistance. Therefore, these projects are required to complete project-specific audits because they are deemed to be "separate entities."

In accordance with the OMB Compliance Supplement, incident to the insured mortgage, where HUD provides federal fund, the audit reports pertaining to nonprofit organizations subject to these regulations are to be submitted within 60 days after the end of the fiscal year audited. The audits currently conducted under applicable HUD audit guides for these programs serve as the organization-wide audits. This means that ANCOR members must bear the cost of a single audit for some federal funds and in addition bear the cost of a separate audit for HUD funds.

HUD's Section 811 program is no longer a loan program nor when the program was previously a part of the Section 202 program was it part of an insured mortgage program. It is both costly and duplicative for nonprofit organizations who receive HUD funding to provide housing for people with disabilities as well as other federal financial participation as direct recipients or as subrecipients to complete both a HUD project-specific audit and an agency-wide single-audit.

#### **ANCOR Recommendation Regarding OMB Circular A-133 and HUD**

ANCOR members have an interest in ensuring that federal funds to provide housing for people with disabilities and supports and services to people with disabilities are subject to appropriate accounting procedures. ANCOR members have a responsibility to use federal funds in a cost-effective and efficient manner. Therefore, ANCOR members have an interest in reducing federal regulatory burdens that add unnecessarily to the cost of the supports and services financed with federal funds. Nonprofit organizations who sponsor HUD "supportive housing for people with disabilities" should not have to undergo the added expense of an additional HUD project-specific audit when other federal funding to the same entity is eligible for the organization-wide audits required by OMB Circular A-133.

**ANCOR recommends that the current prohibition against an organization-wide audit for HUD Section 202 and 811 programs under OMB Circular A-133 be abolished.** With an eye to streamlining government and reducing unnecessary regulatory burden, ANCOR recommends

that nonprofit organizations who receive HUD funding to provide housing for people with disabilities and who receive other federal financial participation be able to complete a single organization-wide audit for all federal participation under a revised OMB Circular A-133 policy guidance.

GOOD MORNING/AFTERNOON. MY NAME IS FRANK BOMHER, PRESIDENT OF AOCA, AND I AM HERE TODAY ON BEHALF OF THE AUTOMOTIVE OIL CHANGE ASSOCIATION. AOCA IS THE NATIONAL REPRESENTATIVE FOR OVER 1,300 QUICK-LUBE FACILITIES. AOCA'S MEMBERS PROVIDE AUTOMOTIVE SERVICES WITH AN EMPHASIS ON THE PROVISION OF OIL CHANGES. AOCA'S MEMBERS ARE CLASSIFIED AS SMALL BUSINESSES ACCORDING TO SMALL BUSINESS ADMINISTRATION SIZE STANDARDS.

DURING THE PAST YEAR, AOCA HAS GIVEN SPECIAL ATTENTION TO THE ISSUE OF OSHA REGULATIONS AND THEIR EFFECTS ON SMALL BUSINESS OIL-CHANGE OPERATIONS. AS A PART OF THIS EFFORT, AOCA CONDUCTED A SERVICE BAY SAFETY SURVEY TO DETERMINE THE CURRENT RANGE OF SERVICE BAY SAFETY METHODS, THEIR COSTS, AND THEIR USEFULNESS. AOCA ALSO SURVEYED REGIONAL AND STATE OSHA INSPECTORS TO ASCERTAIN HOW, AS A PRACTICAL MATTER, OSHA REGULATIONS ARE BEING APPLIED TO OIL-

CHANGE OPERATIONS. THE SURVEY RESULTS WERE ENLIGHTENING, AND, IN THE AREA OF AOCA MEMBERS' SERVICE BAY SAFETY EFFORTS, VERY POSITIVE. THE RESULTS ALSO POINT TO ONE OF THE MOST CRUCIAL PROBLEMS FACING OIL-CHANGE FACILITY OPERATORS TODAY - OSHA'S REGULATIONS ARE SO BROAD AND THE ACCOMPANYING FINE SCHEDULE SO STEEP THAT SMALL BUSINESSES ARE CONSTANTLY AT RISK OF VARYING AND OVERLY-COSTLY ENFORCEMENT EFFORTS.

BEFORE I FULLY ADDRESS THIS ISSUE, LET ME FIRST EXPLAIN THE NATURE OF THE MOST COMMON OIL CHANGE OPERATION SAFETY ISSUE. MOST OIL CHANGE OPERATIONS USE SERVICE PITS TO SERVICE CUSTOMERS' AUTOMOBILES. GENERALLY, THE QUOTE "PIT" IS ACTUALLY A BASEMENT OR SUBFLOOR LEVEL WITH OPENINGS IN THE CEILING THROUGH WHICH THE SERVICE TECHNICIANS WORK ON THE UNDERSIDE OF VEHICLES DRIVEN OVER THE OPENINGS ON THE LEVEL ABOVE. THERE ARE ALSO FACILITIES WHICH USE HYDRAULIC LIFTS TO RAISE



THE AUTOMOBILES UP FOR SERVICE ACCESS. IN EITHER CASE, THE MAIN ISSUE FOR OSHA REGULATORY PURPOSES IS THE SAFETY OF THE SERVICE TECHNICIANS IN SERVICING THE VEHICLES. IN THE CASE OF SERVICE PITS, THERE IS THE ADDITIONAL ISSUE OF EMPLOYEE SAFETY WITH RESPECT TO THE FLOOR OPENINGS WHEN THEY ARE NOT COVERED BY A VEHICLE FOR SERVICING.

AS EVIDENCED BY THE RESULTS OF AOCA'S SERVICE BAY SAFETY SURVEY, AOCA'S MEMBERS ARE ACUTELY AWARE OF THE SAFETY NEEDS OF THEIR EMPLOYEES AND USE A VARIETY OF MEASURES TO ENSURE A SAFE WORKING ENVIRONMENT. SUCH MEASURES INCLUDE EXTENSIVE EMPLOYEE TRAINING, THE USE AND ENFORCEMENT OF STRICT WORKPLACE RULES REGARDING CONDUCT IN AND AROUND THE SERVICE AREAS, AND VARIOUS METHODS OF COVERING SERVICE PITS. FREQUENTLY, AOCA MEMBERS EMPLOY SEVERAL DIFFERENT MEASURES TO ENSURE EMPLOYEE SAFETY.

THE REAL PROBLEM FOR AOCA MEMBERS IS NOT

MAINTAINING SAFE WORKING ENVIRONMENTS FOR THEIR EMPLOYEES, BUT RATHER, AS MENTIONED ABOVE, MAINTAINING ABSOLUTE COMPLIANCE WITH THE STRICT LETTER OF VERY BROAD OSHA REGULATIONS WHICH MAY BE ENFORCED DIFFERENTLY DEPENDING ON WHO IS DOING THE ENFORCEMENT. AS PART OF AOCA'S SURVEY OF REGIONAL AND STATE OSHA INSPECTORS, AOCA ASKED THE INSPECTORS TO DESCRIBE THE TYPE OF SERVICE BAY SAFETY FACTORS THEY LOOKED FOR IN INSPECTING AN OIL CHANGE FACILITY. NOT SURPRISINGLY, THERE WERE NO UNIFORM RESPONSES. FOR INSTANCE, ONE STATE INSPECTOR REQUIRED EMPLOYEE TRAINING AND SERVICE PIT MARKING WHILE ANOTHER ABSOLUTELY REQUIRED THE USE OF PRE-FABRICATED PIT COVERS. BOTH INSPECTORS BASED THEIR INSPECTIONS ON THE SAME FEDERAL OSHA REGULATIONS. IF EVEN THE PROFESSIONAL OSHA INSPECTORS HAVE DIFFERENT INTERPRETATIONS OF OSHA REGULATIONS, HOW CAN WE EXPECT SMALL BUSINESSES OWNERS TO INTERPRET THEM IN ONE PARTICULAR WAY OR

ANTICIPATE TECHNICAL REQUIREMENTS ABOVE AND BEYOND OBVIOUS SAFETY MEASURES.

AOCA APPRECIATES THE FACT THAT OSHA'S REGULATIONS ARE BROADLY DRAFTED BECAUSE THEY MUST BE APPLIED TO A MULTITUDE OF DIFFERENT TYPES OF INDUSTRY. HOWEVER, IF THEY MUST BE BROAD, THEN AOCA RESPECTFULLY REQUESTS THAT OSHA PROVIDE A UNIFORM INFORMATIONAL OUTREACH TO SMALL BUSINESSES WHO ARE TRYING DILIGENTLY TO COMPLY WITH OSHA REGULATIONS. AOCA ALSO SUGGESTS THAT OSHA CONSIDER PROVIDING WARNINGS RATHER THAN FINES TO SMALL BUSINESS FACILITIES EXPERIENCING THEIR FIRST OSHA INSPECTION. EXORBITANT FINES DO NOTHING TO IMPROVE THE SAFETY AT A SMALL BUSINESS OIL CHANGE FACILITY BUT RATHER SERVE ONLY TO DEplete THE BUSINESS OF FUNDS IT WOULD USE TO COMPLY WITH THE REGULATIONS IT HAS SUPPOSEDLY VIOLATED.

IN SHORT, AOCA MEMBERS ARE VERY ACTIVELY MAINTAINING SAFE ENVIRONMENTS FOR THEIR

EMPLOYEES WHICH INCLUDES COMPLIANCE WITH OSHA REGULATIONS. WITH RESPECT TO OUR REQUEST THAT OSHA ENGAGE IN MORE OUTREACH EFFORTS AND WARN RATHER THAN FINE SMALL BUSINESSES, WE EXPECT SOME TO SIMPLY RESPOND THAT IGNORANCE OF THE LAW IS NO EXCUSE AND ADJUSTMENTS NEED NOT BE MADE. HOWEVER, A LAW THAT IS TOO VAGUE TO PROVIDE ADEQUATE NOTICE OF ITS REQUIREMENTS CANNOT FAIRLY BE APPLIED IN SUCH A MANNER. THE FACT IS THAT SMALL BUSINESSES NEED SPECIAL CONSIDERATION IN THE AREA OF OSHA ENFORCEMENT AND AOCA IS HOPEFUL THAT THIS HEARING WILL SPUR THE CONCERNED PARTIES TO ACT ON THIS NEED.

I THANK YOU FOR THIS OPPORTUNITY TO SPEAK TO YOU TODAY ON BEHALF OF AOCA AND I WILL BE AVAILABLE TO ANSWER ANY QUESTIONS YOU MAY HAVE.

BOSTON PUBLIC LIBRARY



3 9999 06350 046 4





ISBN 0-16-052640-X



90000



9 780160 526404